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MsB
L71
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17-328

Private Wrongs

Among the injuries comprised under the head of Private Wrongs are Slander and Libel. If a man maliciously and falsely utter words affecting the moral character of another it is in law denominated Slander — If he causes such accusation to be printed or otherwise published it is called a Libel. In words uttered the only remedy is by action on the case but in the case of a libel the party publishing the same is also liable to a public prosecution for every Libel has a tendency to the breach of the Peace by provoking the person libelled to break it 3 Bl. Com.¹²⁵ What is called by the Latin Scandalum Magnatum is the charging an officer of Government with misfeasance or corruption in office and what is somewhat remarkable the Defendant or person making the charge is not allowed to give the truth in evidence. To remedy this supposed anomaly in this country the Congress of the United States near the close of the Administration of the elder Adams passed a law affirming the Common Law and providing the Defendant should be allowed

to give the truth in evidence but as the law became very unpopular it was soon repealed or expired by its own limitation. It was familiarly called the gag law and was so denominated for party purposes and had much to do in rendering the administration of Mr Adams unpopular and altho Mr Harper a member of Congress ^{effect of the} very clearly pointed out the repeal it did not seem to be realized until the prosecution of Harry Crosswell for a libel on the Government & also of Rev. Abel Bachus of Bethlehem for utterances against Mr Jefferson.

The general rule is that charges uttered against any person falsely which if true would subject him to corporal punishment are actionable in themselves and as all men are presumed to be free from crime the words spoken are presumed to be false & malicious - but this presumption may be removed by competent testimony. Another general rule is that words falsely spoken even if they are not actionable in themselves yet if they are false & tend to injure a man in his trade or profession or have a tendency to subject him to some damage & in this case it is not sufficient for

the Plaintiff merely to prove that the defendant
spoke the words for which suit was brought - But some
special damage must be alleged in the declaration
to have actually arisen from such words - & this spe-
cial damage must be proved on trial - or the Plain-
tiff cannot recover. As to words actionable in them-
selves it need not be alleged in the declaration nor
proved on trial that special ^{damages} had arisen to the Plff.
in consequence of the words spoken. As to what words
are actionable in themselves there are several clas-
ses - the first & principle class is all words importing a
crime which (if the words were true) would be sufficient to sub-
ject a man to greater punishment than a mere penalty or to any
corporal punishment - these are actionable in themselves
On the other hand all words importing a charge of an of-
fence not punishable by law are never actionable in themselves
as if one be charged with being a Liar. Lying is in-
deed a scandalous offence but it is not punishable
as such by human laws. For the offence charged up-
on one be ever so scandalous, mean, base, wicked, dirty
a trick, if the offence charged be not punishable an ac-
tion will lie for speaking the words. But what shall
be said of the middle ground where a man is char-
ged with a crime punishable only with a penalty
It cannot be ascertained by general rules when words
importing a charge of this kind are actionable and

when not. It must depend very much upon the
opinion of mankind in general - and the court
are to consider it accordingly. The words spoken
may not affect the reputation of a person as
if one be charged with treason at certain times
and yet they are actionable. Neither is it nec-
essary in order to constitute slander that the
offence charged should be punishable by Common
Law as if one be charged with being an adulterer
or with having committed adultery. Adultery is
by our Statute punishable with ^{whipping and a rope round the neck} a penalty. But by the
Common Law it is not punishable at all - The cus-
tom of London makes adultery a crime, and the
punishment is that the person shall be carried
round the city in a cart - and for the same rea-
son the calling a woman a whore is actionable.
It is often said in elementary books that words
spoken in the heat of passion are not actionable.
Sometimes it is said that words thus spoken will
operate in mitigation of damages - words that are
~~freely~~ the offspring of passion as villain, rascal,
scoundrel are often not actionable. But it is not true
that the heat of passion operates in mitigation of dam-
ages or renders the words spoken unactionable.
The truth is the law throws some kind of a man-
tle over the frailties of human nature but

supplies for

never countenances or covers vice. If the heat of passion proceeds from provocation on the other part then & then only will it operate in mitigation of damages. The words spoken must be a charge of a fact in order to be actionable not a mere disposition to commit a crime. It is not material what the words are provided all the words taken together make out a charge of a fact or actual crime. No circumlocution will prevent the court from putting a true construction upon the terms & whether they are actionable or not is to be determined by their meaning — as in the words he gave council to such a man to kill me and then fly the country — these words were held to be actionable. If one charges another with an attempt to kill a person it is actionable for an attempt to murder is a crime and subjects a man to punishment.

The fact of the attempt must have been laid in the declaration as such. And because they were not so laid in a case in *Loke* these words were held not to be actionable: *adjective* words become actionable if they import a crime — a fact — as a perjured villain but the words *thievish rogue* have been held not to be actionable.

It is likewise said that a charge of that which could not have happened is not actionable as where one was charged with killing his wife who was yet alive. It seems to me says the Judge that this is not the true ground of distinction

Suppose says he a man should be charged with steal-
 in a horse in Litchfield on the 5 December and it
 should be proved that he ^{who} was then charged was at
 Georgia at the same 5th of December yet no doubt
 but that these words would be actionable. It cannot
 be true as a general rule that words charging that
 which could not have happened are not actionable.
 The true ground of their not being actionable was
 that nothing felonious was intended to be charged
 So where a Master was charged with murdering his
 1 Sid. servant in Fairfield. It appeared on trial that the
 16-53 boy had been severely corrected, ^{discourged} a number of times and
 1 Roll. that he had run away into New York State so that no one
 71 could tell for a year or two where he was, the action
 68-39 was held to lie. So where one was accused of stealing
 44-65 and it appeared on trial that this word referred to steal-
 Bro. 6. ing a lady's heart - were held not actionable because noth-
 504 ing felonious was intended. If by the law the inten-
 1 Kent. tion to do an act is made criminal - words charging one
 117-149 with such an intention are actionable. ^{the} Intention to
 2 Lev. kill the King is punishable - and therefore these words are
 205-233 actionable - So to charge one with assembling with others
 Bro. J. to pull down a house is actionable tho the house be
 622 not pulled down for the mere assembling together for
 1 Str. that purpose is a riot and punishable as such - But
 142 where the mere intent to do an act without the act itself

7.
is not punishable tho ever so slanderous words
~~are used~~ charging only an intent the words used
are not actionable — So charging a man with an
intent to murder is never actionable — but charg- 93
ing a man with an attempt to murder is actionable. 135
So charge one with keeping houses of bad fame is ac-
tionable — tho no greater punishment be annexed to
the crime or offence than a penalty — The infamy
of the charge does not seem to be any criterion pro-
vided punishments are not annexed to the crime.

The 2^d class of cases relates to slandering a man in 1 Roll.
his profession which would dry up the sources of his 54-5
Livelihood. As to call a Lawyer a knave — you might as 57-58
well cut his throat says the Judge. — So to say he is no 100
Lawyer at all — or that fellow has been for ten years following the 262
law but has never overtaken it — or Did you go to him for advice? you 100
had better take care he'll deceive you. or He dont care what coun- 100
cil he gives if he can only feel of your purse. So any thing said 100
in derogation of his ability in his calling — or his integrity 272
as in these words — He a lawyer! as much so as the devil is 100
— or He knows no more law than a goose. — So charging a 327
lawyer with want of skill & principle in conducting his 300
business — tho it may not have the effect to destroy his 59
business — yet ^{the} words are actionable. As to slandering
Physicians the saying of him he is a quack — an empiric
a mountebank or the like these go to charge him with

account of skill in his profession and are of course
 actionable - But if a Physician with being a ~~quack~~
 it is not actionable unless the words bear particular
 1 Roll. and special reference to his accounts or the like as
 54 keeping false accounts. So charging a physician
 71 with want of integrity as to his business - as with
 administering noxious medicines to protract the disorder
 Str. is actionable. - as to slandering Merchants - the cal-
 762 ling him a bankrupt - or say of one he is insolvent
 Do. Ray. he owes more than he is worth - these words are action-
 480 able. The same is the case with Tradesmen and
 all those classes of persons to whom property is
 intrusted - But if you charge a Sailor with be-
 ing a bankrupt or a Lawyer with being a quack
 or a blacksmith with being a quack - these words
 1 Roll. are not actionable. The charging a man with not
 59 understanding his business - not only with hav-
 1 Kent. ing done wrong - but an actual want of skill - as
 117 to say of a Miller he has taken too much toll - or of a Sailor that
 263 he cabbages the cloth. - or of a Shoemaker that he is a bungler
 or a cobbler or a host he is a stinter of the children who bo-
 ard ~~at his house~~ there. So the calling a clergyman a heretic. I
 was once engaged says the Judge in a case of this kind
 in my practice in the State of Massachusetts where
 a Minister brought an action of Slander against
 one of his parishioners for calling him a heretic

The declaration was demurred to and the question came directly before the court to determine whether he was a heretic or not. The court did not know what to do with it. — The Chief Justice said to the counsel do you think I am a going to set here and decide upon the question whether the clergyman preached true doctrine or not? Judge Keene who was counsel for the ~~affiant~~ moved that a council of ministers of the same denomination should be called and that this question be referred to them. This struck the court as being right and they adopted it. — This council of ministers held that he preached true doctrines — and of course damages were recovered. It is difficult to determine in such cases what is absolutely the right doctrine unless the court adopt Phillips's rule viz. If your doctrine agrees with my doctrine — you are orthodox — but on the contrary if your doctrine does not agree with mine then yours is heterodox.

As to words spoken of one in his official capacity many words become actionable when thus spoken which would not be so if spoken of him in his private character. Words spoken contemptuously or in derogation of one in any office of dignity trust or profit: a man in his official capacity is not to be charged with want of integrity nor ordinarily with want of understanding. The words to be actionable

when not actionable if they had been spoken of him
 in his private character - must be in the colloquium
 or concerning the business of his office. as to say
 like of a judge. He is a corrupt judge - or a dishonest he is a Ben-
 the headed justice - or that he covers his felonies - or that he never
 could have the least justice done but always injustice - or that
 he decided corruptly in that or that he was a partial
 judge - or even the words Dear, Respected Sir - &c. &c. if they
 refer to his conduct in any particular case are
 actionable - The words he attempted to murder me at
 the instigation of Justice Bee - the court held not to be
 actionable. But it so happened that the action was
 not properly brought. The action was brought as
 having charged Justice Bee with instigation &c. in
 his official capacity - & so far as this the court
 were right in deciding that the words were not
 actionable for that the words did not relate to him
 in his office - But even the judge the case was
 not rightly decided because the words ought to have
 been considered actionable in his private capa-
 city. There is a distinction running thro' all
 the authorities between words spoken &c. in
 an office of profit - and words spoken of one in
 an office of credit - As we in Connecticut are
 not regulated by any such distinction it will
 only be necessary to observe that charging a man

with want of ability in an office of credit as to
 say of a Justice of the Peace he is an ass - or a knave - with
 loaded bullets is not actionable. But it is other- 695
 wise with offices of profit. - And in both the
 charge of want of integrity and understand-
 ing is actionable and the reason given is that
 a man cannot keep his want of ability as he
 can his want of honesty. 4th Charging one
 with having a disease which if true would ban-
 ish him from society is actionable. But to ac-
 tionable the words must have been spoken of him
 as having the disease at the time the words
 were spoken - i.e. in the present tense - for if one
 be charged with having had a disease of this kind 70
 it is not actionable - as if one should say he has 41st.
 given the bad disorder to Maria - this is not actionable. 1st
 But to say of one he is a leper or mad or a spy, is actionable hold-
 ing a leper shall according to the Act have be removed 44
 from society. So also are the words But man is full of sin 400
 he is a mad dog you will cut with him. - the disease must
 be infectious &c. more -

It has already been observed that words charging
 one with a disposition to do an act are not actionable
 but if the words are accompanied with such cir-
 cumstances as from a just construction they were meant
 to imply an actual commission, as in these words in

18- I am John P. I don't know - Well, I am sure - you know
 had to more store don't you know - you know John you are a good
 well, I want to that store for a year. It is no matter what
 the measure is if it implies what (if true) would be
 sufficient to subject him to punishment. And
 the very same words once or more not be action-
 able - as if one be asked what a matter he is doing
 in said or - like a matter for dealing. This was not not
 21- It is a mistake. But where one said he was put in the
 22- main house for dealing - I believe - these words
 23- were not to be action - as if to make an example of you
 24- would make at the next court. - I believe I should be
 25- well time there - I am not sure of a certain doubt & the
 26- letters to be received - I believe do you intend to bring home
 27- him my own store. - And you ever hear of John P. I believe
 28- to be a man? Well, I never store any - as if to tell to that
 29- the Charles a man who never - oh, I don't know how to but I
 30- will him on. I don't know since I have been in the
 31- I don't know what he is or I dream - as so is no excuse
 32- By the common law as it formerly stood it was
 no good defence that another told him so - as if it were
 I am not sure of a certain doubt & the
 33- me, I believe you are not worth a cent in the
 34- the common law as it formerly stood it was
 35- a libel - as if they were told it by a man. But late decis-
 36- ion of the court has been decided. & this seems
 37- to be the law now.

take the law as it now stands - If the man who
 first reported the story be a man of property suf-
 ficient to respond the judgment or will give suf-
 ficient bonds with surety. &c. then he may
 make this his defence in the action - but the
 true author must be given and sufficient evi-
 dence to convict him - But says the Judge I am
 not very fond of this practice - I feel unwilling to
 depart from the old rule - It seems to me said that
 just like throwing firebrands from one man to an-
 other and the last ones throwing it into a house
 by which the house is burnt. & the law will over-
 rule any of the persons for burning unless it be him who
 actually threw the firebrand into the house. And
 so the law should be says he in respect to slanders. 110
 If one should say I know what Stokes is & I know what
 I am the Attorney. Words spoken
 by the counsel or court in the course of legal pro-
 ceedings which would otherwise be actionable are
 excusable - provided the words are in point. The
 counsel are never to go out of the way or out of
 the due course of their arguments to slander
 a man. - If a man brings a suit against another
 charging him with a crime without apparent
 cause the remedy is not on the ground of slander 46
 but of malicious prosecution - provided this action 114

was brought before a court having jurisdiction
of the crime charged -- but if the court have not
cognizance of the matter then slander will be
concurrent with malicious prosecution.

Words are not actionable in themselves
but rendered so by reason of some special dam-
age ensuing. This damage is not con-
fined to pecuniary loss -- but may be loss of pro-
fession or marriage &c. as if a candidate in of-
fice in state or in church be slandered in which
he loses the office. As if one says of Lady she is
a woman of evil virtue -- not chaste &c. by which she loses
her suit. But if a man says his sister is a
dishonest lady and by reason of a charge against her
relinquishes her -- she may bring an action of slan-
der but if before she brings her action her sister re-
turns finding fault it was a false report and marries
her it seems no action will lie per quod. Where sub-
stitution in the intermediate space execution of spirit in the account of
his leaving the story to be true ^{and in fact} her father to turn her out of doors
and ill treat -- may not the action be brought with a per quod for
the damage on this account. You will remember says
the reader I mentioned to you in a former lecture
that in all slanderous words there was a presump-
tion of malice and falsity. It is now to be observed
in speaking of what words are not actionable that

were in themselves actionable or non-actionable - or
 special damage may be explained by the pre-
 cedence or succeeding conversation - or discourse
 as to render them innocent - as where one was
 said to be in badling circumstances and the action
 was brought for these words with a per quod that one
 Lane would not treat him with a horse. Lane was
 the only witness and by his testimony it appeared
 to be only a general caution to Lane. - so where
 a woman said of a girl who was once her servant
 she was saucy & impertinent and often lay out of her own bed
 but that she was a clean girl and did her work well - the ac-
 tion was brought with a per quod she was prevented
 from getting a place to live. - Also where one
 was charged with being a murderer - and it appeared
 on trial that it related to his killing horses - and
 as before said bletting when it related to stealing a
 ladies heart. - There is important no certain charge
 of any crime or offence are not actionable - can't
 fix the line of distinction very precisely - as if one
 saw some boys new out & some all grown up and one of them
 is at it. It was held to be such in this case that they
 all may bring their actions but the decision of the
 court & the true decision was that these words thus
 spoken were not actionable. If one charges another
 with an offence and after propagation it brings a suit

to this crime or offence ~~it~~ it is no excuse
 or excuse in action & slander unless as before the ac-
 tion thus brought is before a court which has cogni-
 zance of the matter for then the action must be
 grounded upon malicious prosecution. I attempted
 to support an action once seen the judge - where
 one man took another up in his arms and
 showed him his fleeces of wool where it was ap-
 parent some was gone from each fleece - then point-
 ing his finger to one of his neighbours - but no
 words were used to particularize the person im-
 plicated and the action failed. Slander by the law
 is only a civil ^{injury} and redress is only had by a civil action.
 I don't know says Judge Reeve as it is made crim-
 inal in any of the States but this. Our Legislature
 says he went at an early period to great lengths in
 making injuries civil in their nature punishable
 by public prosecution - and among the rest credulity
 & such as throw courts into ponds did not escape
 their notice. I did not show weakness of mind but
 only a kind of public zeal for the good of individuals.
 This statute was probably copied from a similar one
 in England. Our Statute makes slander punishable
 with a fine of \$100 for each offence - & tho it is almost
 immemorial in its existence - yet I have never known
 slander thus punished says the judge - & I presume

no one was ever convicted under this statute the remedy by a civil action being much more ample
In declaring upon actionable words it is not necessary to lay any special damage - this however will not vitiate the action tho it cannot be proved on trial - But, as words not actionable in themselves some special damage must be laid in the declaration to have ensued and this damage and no more than this damage must be proved on trial. It may be essentially necessary to aver in the declaration that the Plaintiff has maintained a good character and it may sometimes be disadvantageous - for in the latter case the defendant may enquire into his general character - and whatever he detracts from his general character will go in mitigation of damages. But the Plaintiff averring his own good character in the declaration has not the effect of introducing the most respectable of the community to testify verbally to his general character. It must be averred that the words were spoken falsely & maliciously or it is fatal. The statute of limitations bars all right of recovery after three years from the time the cause of action accrues. This rule does not reach cases of special damages where can the action be brought for special damages after three years from the time the damage accrued. By the Law not being means that he did not

Libel upon the one charge & therefore upon the other
of libel there was matter of fact to be proved
that upon the one charge the defendant was
guilty both the matter of fact & the matter
of law. Upon the other charge the matter
of fact was proved but the matter of law
was not. The defendant was not guilty
of libel upon the one charge but was
guilty upon the other. The defendant
was not guilty of libel upon the one
charge but was guilty upon the other.
The defendant was not guilty of libel
upon the one charge but was guilty
upon the other. The defendant was
not guilty of libel upon the one charge
but was guilty upon the other.

II of Libel is defined to be a crime
which is committed by a person who
publishes a libel. A libel is a
written or printed statement which
is intended to defame a person.
The law of libel is a branch of
the law of tort. A libel is a
crime which is committed by a
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branch of the law of tort.

truth of the offence may be given
in evidence. But a man is indicted for
a crime he cannot give the truth in evidence. This
is the judge is the general opinion concerning
the common law. The statute in this state has al-
lowed the defendant in such cases to give the truth
in evidence. But says the judge I conceive that
by the true construction of the common law in
actions for libels upon civil government where
there were no ascriptions of improper motives
the truth of the facts charged may be given in evi-
dence. If so the judge there does exist any
such maxim in the common law the defendant
in all public prosecutions ^{for libel} shall not be allowed
to give the truth in evidence - there is more humani-
ty in it than in all the rest of the common law
I could never believe even he that the maxim
shall extend when there were in the libel no
insolent ascription of improper motives. The only
ground of public prosecution against a person for
libelling an individual is that ^{such} libels tend to create
breaches of the public peace by exciting the enemy
is libeled to open violence - and this whether the libel
be true or false - and human nature is such that truth
will wound the feelings frequently as much as falsehood
therefore it is totally immaterial to the public whether it

prosecuting whether the fact charged be true or
 false and the truth shall not and ought not to
 be given in evidence. — This reminds me says
 the Judge of what an old woman said once when
 she had been slandered by a neighbor. I should not have
 minded it half as much if she had ^{about my} said, had not been
 true. In writing concerning the several measures of
 government — its weakness or the like would not
 tend to excite any one to violence. If you see it
 300 and to bring the government into contempt. —
 125 we don't know where to stop — it will certainly be
 200 a breach of genuine liberty to make disappro-
 334 bation of the measures of government criminal
 And if you once admit the idea that truth will
 bring the government into contempt you may as
 well say that all disapprobation of government
 at measures will bring the government into con-
 tempt. I don't believe there is there ever was such
 a principle in the laws of man. When the
 constitution was made in 1787 the (you know) 1790
 failed — some eminent lawyers (not yet called)
 in the new age aimed that it allowed of the truth
 taken even in evidence or that it maintained the
 common law. But it's mistake not — Harber ex-
 pressed ^{repeated} the opinion that he did want to tell the
 truth with impunity. This construction was put

— your son

upon the sedition law to the courts so that the truth was allowed to be given in evidence. & that notwithstanding the common opinion the law as it was called this very law allowed the truth to be given in evidence - either in a statement (at least) of the common law which is the better opinion or it militated the common law which seems to have been the general opinion. After the report of the sedition law the case of *James Brownell* came on and he was not allowed to give the truth in evidence - the court were of opinion that the C.L. did not admit of it - & the sedition which did admit it was repealed - & admit say the judge that where an indictment went out against ~~some~~ one for a libel on another private person then some of the other only is it immaterial whether the facts or statements charged were true or not. All the sedition law of 1800 did was to admit the truth to be given in evidence where one was publicly prosecuted for making a libel upon government & its measures. This law is far from the notion that some held of it that the greater the truth the greater the libel. The Circuit Courts of the United States are bound by the Statute of each State where the cause of action arose. This was decided by Judge Edwards & *in re*, *prosecution for libel* in this State the truth is allowed to be given in evidence.

words which would not be actionable become so
 by being written or printed - because they are
 141 more permanent & more likely to be spread a-
 108 broad than those in writing which reaches a
 124 man's eye, & is often more or less his
 150 a tendency to do it is action itself. - & even the
 166 initials of a man's name instead of the name
 215 itself is no reason if the person meant can
 184 be determined. & yet the name a foreign name
 194 even excuse provided the person can be discovered
 144 from the description. If a man's name means
 174 Semetikes and this can be known it is sufficient!
 If one reads a history of a fact or publishes an ex-
 tract from one and it is a copy of the fact or
 person - the one name is a sufficient statement
 yet it is no libel. What is more so was the common
 sermon - reciting the name of a person. There
 may be such a thing as a libel the not giving
 of a particular name to a person in the court of law
 as a book written to denounce a man which is in
 144 secret - having a tendency to do so. & yet it is
 178 prosecuting persons for false principles and their
 opposition to religion - I am willing to see an end
 to this business & it is sufficient to make the
 importance of it. Suppose now we should
 undertake to punish those who publish false doctrine

or those who renounce all religion or teach false religion - suppose we should run them down into great guns and shoot them into the sea when they get the power into their hands they will serve us just so." I don't believe says Judge Moore that Government had a right to prosecute David Hume for what he published respecting religion tho I no more believe in the doctrine of Hume than in that of Voltaire. If one chooses to sacrifice to Jupiter let him do it as long as he lets other sacrifice to whom they will. Government ought never to tolerate infamous scurrilous publications. - these are not nor can be instrumental to any good purpose. In civil actions for libels "the truth of the facts charged and published is matter of justification. - a libel is no libel if men read it unless it be published but what is a publication sufficient for a libel? Where a writing was found in a man's closet tho' man is not guilty of a libel. The reading to another of a libel out of a book or newspaper is no libel - but suppose one reads it a second or third time - this depends upon the *quo animo* - If one carries the paper about and then reads it to others on purpose to spread the story

amount in order to secure the debt - in either
 case actions lie or do not lie. In the first opinion
 decided that although it is the property amount
 there was necessary did not subject one to damages
 the reason of this is that there is no actions
 real estate. This action may be maintained a-
 gainst one who brings a writ in the name of another
 or without authority to do it - as if an attorney
 140 is another person - he is to sue upon an obligation put
 141 into his hands without being authorized. This action
 142 may also be maintained against one who brings a
 writ, but before a court which he has no jurisdiction
 143 to have the judgment of the court in order to show
 144 that the writ had no jurisdiction. A question has
 been raised whether there can be a writ of certiorari
 where the claim is for money even though he had no
 just grounds for the claim provided the writ
 is granted in a regular manner. It seems dif-
 ficult to draw a line of distinction and find what
 shall be considered a writ without any claim. For
 persons often bring writs where they have no just
 claim. And there have been in this state some
 contrary decisions yet by the judge I am of o-
 pinion that there can be no action maintained where
 the writ is without money.

and the cause for bringing this action is where
the person who brings it has been proceeded against
with for some crime or misdemeanor. Some
malicious information having been given
In this case the person proceeding against is in-
jured in his reputation - he is put in hazard of
paying out a large expense. We all know
there must have been a prosecution which and the
reputation. The cause being thus raised
and accusations in their nature - it is proba-
ble that the court or officer would quash them
as the rule now is there need only be an end
of the prosecution and it is immaterial whether it
is quashed before or after a verdict or acquittal
by trial and acquittal.

In order to support the action the Plff must
prove the wronging against him to have been
malicious and without probable cause - for
~~there can be no malice~~ in others can be no
malicious prosecution without probable cause
if no probable cause appears the presumption
is that the prosecution was malicious - This pre-
sumption however may be rebutted by any thing
which shows there was no malice. If a person
is examined by a justice of the peace and bound over
to appear in court this is prima facie evidence

that there was cause - this however may be re-
bated and the justice together with all the reasons
1415 cannot shown to have been actuated by malice
It has been said that a prosecution which is
one for a crime or felony where none had been
committed must have been malicious - I don't
think this is true say the Judge for it is certain
that persons have been hanged in England for of-
fences which were never committed. - I think
say it there may be circumstances which show
a probability of an offence having been com-
mitted when in fact the offence never was
24 committed. Persons may be joined in an action
1410 for having procured a malicious prosecution
1415 but separate damages cannot in such case
25 be given nor can separate executions of law

having considered the injuries to a man's
reputation under the head of Honour & that and in-
juries affecting in part his person and in part his
property the next subject under the head of personal
wrongs occurs of

Injuries To Property

One method of obtaining redress in cases of
injury to personal property is by an action of

Trove

Trove was first introduced to secure damages or property found by the defendant and converted to his own use. Having been instituted for this purpose and seems convenient for other uses it is now extended to almost all cases where one person has the property of another in his possession which he ought to restore. But the same principle will in that manner cover the Tolt case in the property it is the practice to suggest in the declaration that the Tolt came to the goods in by giving & that he has converted them to his own use. The conversion is the gist of the action. In an action of trespass or conversion it may be a general allegation to convert or to convert - the first where the Tolt obtains possession of the property wrongfully - and secondly where the possession was lawfully obtained but the detaining of it is unlawful. In the former where the taking was tortious the proof of such tortious taking is sufficient evidence of conversion and there is no need of remaining retained. In the latter where the taking was lawful remains are retained and it is necessary to prove that remains are retained and it is necessary to prove that remains are retained and it is necessary to prove that remains are retained. If it is proven the owner will have the property restored if it is not then it is a demand need not be proved for he has converted it. There may be cases where one person

took them - or leaving the tortious taking, trover & wrongs
will lie in the damages - or pursuing all sort
both of taking & keeping it - until the per-
son has been received. It is a covenant with
an action in the case for fraud in some cases
or where one went into a store to purchase goods
affirming that he was such a man - whom the owner
of the goods knew to be a man of property but who stood
at a distance & no personal acquaintance be-
tween them - In this case the purchaser having
bonafidely obtained credit - may be liable - in
leaving the goods in an action of trover for the
goods supposing the contract to be void and the
taking tortious.

The old action of Detinue is which is over
as success was brought to recover a specific
article where the possessor was turned out
first but eventually detained. Detinue is not
now put as it might be argued Trover is conver-
sant with it where the original possession was
lost but a wrongful detention. And where
the original possession was the point where there
was no liability of detinue & recovery to be had
or the property was to be recovered in the
only remedy. - And the action of detinue
must otherwise be a right of property in the goods.

over to the person who has the general property. But
 this rule does not hold in all cases if the
 goods are lost without any fault in him who
 has the special property he is not liable over
 to him who has the general property. The real
 reason may then be that it is better for the man
 who has the general property that he who has the
 special property should have a right to recover
 as the one who has taken the property might be
 gone - or destroy the property before he would have
 knowledge. ¹⁰⁰⁰ Objection again been observed in 8
 and prima facie evidence of property. ¹⁰⁰¹ If
 one pays money for goods - receives a bill of sale ¹¹⁰⁰
 for them and takes them in possession of the ¹¹⁰¹
 vendor - the vendor here has no property in them ¹¹⁰²
 Partial destruction - such as drawing wine ¹¹⁰³
 from a cask and filling it with water as has ¹¹⁰⁴
 been determined enables the owner of the liquor ¹¹⁰⁵
 to bring trover for the whole. I should however ¹¹⁰⁶
 think say the judge it might well be con-
 sidered that trover would lie only for the part
 removed out. He who has the special prop-
 erty can never maintain an action of tres-
 pass vi et armis against him who has the gen-
 eral property, whether injury be done to the
 property of his in the manner of the former

holding up the fist in an imprecating posture
 presenting again at one at such a distance as
 it would serve to effect - or laying one's hand on his
 sword in an angry manner. In all cases of ass. But
 still it must be in the power of him making 138
 the assault to do the injury threatened. For should I tell
 one far from the reach of another holding up his fist
 & say it would not be an assault. - & then one
 suddenly brought to a violent assault. In the course
 of my practice, my Judge Rouse I have known but
 one -- But an assault is always included in
 a battery.

1st Battery is the actual inflicting of a corpo-
 ral hurt upon a person - and the least hurt or
 even touching if done in an angry or revengeful
 and or insolent manner is a battery. In Eng.
 there have a higher species of battery distinguished
 to be the worst manner - by which is meant the
 striking one of any member useful in fight
 as an eye - a forehead or a finger. A peculiar
 circumstance attends the trial for this injury
 viz that the court or officio man when views
 of the wound (super visum calveris) increase the dam-
 ages - Hence not does the law that a blow on
 has been considered a distinct species of injury
 in this country but only as a atrocious battery

To support this action the injury must have
 been direct - for if the damage is only conse-
 quential the remedy is by trespass on the
 case. There has sometimes been difficulty in
 determining what is a direct and what a con-
 sequential injury. Where one threw a lighted
 3rd squib which fell near persons who to avoid
 4th injury threw the squib again and after a third
 5th throw fell by a person burst & hurt his eye.
 8th It was held by the court (and rightly) that the
 person who injured was liable for this action
 against the one who first threw the squib. It was
 compared (I think with no justice) to the turn-
 ning of an account or a Ball amongst a num-
 ber of persons - for whatever injury he does to
 any person - he who turned in a ball will be
 liable for in this action. Justice Colchester
 differed from the rest of the court & thought
 that the person who did this lost his eye
 could have his remedy only by trespass on the
 case - He advanced several correct principles
 but made a wrong application of them to the
 case - he thought that one threw the squib
 the second and third times were two acts -
 that they were capable for throwing the squib
 respectively when it might injure, and therefore

concluded that the damage was not direct
as it respected him who first threw the squib.
The other judges supposed (and justly) appre-
hended from the case that the danger apprehended
from the squib might justify them in throwing
it in some manner. But Blackstone inclined
to think that an action of assault and bat-
tery would lie against those who first threw
the squib and compared it to a man's lifting
his cane and unintentionally hitting and
injuring a person behind him. The exam-
ple last adduced is liable to lead to misund-
erstanding. There can be no doubt but
negligence will lie against one for doing an
injury which he did not intend - but it must
be where some culpable neglect is imputable
to him. Should a man lift a cane standing
among people or where it might be expected
they would pass - and should he injure a per-
son he would undoubtedly be answerable for
the damages - And the reason is that he was
guilty of negligence in not being certain that
no person stood in his way. But should one do
the same act in a place where there could be
no reason to suspect that any one was near
it would be excusable, so that in all cases -

to render a person liable in all his acts there
 must be a will to do the act or some negligence
 18216 I think says more than a person might
 18215 more to be liable to damages for injuries
 18214 resulting from his acts if they are such as
 18213 which people commonly do. Where however
 a person undertakes to do an unlawful act and
 does in consequence of some intention some
 unlawful act which he is bound to do he is at
 18212 law and liable. When one receives an injury
 18211 in consequence of another's consent to an unlaw-
 18210 ful act - in it too as well as consent & law both
 18209 or one or the other is injured. It is said that
 18208 a man may be acting against and with
 18207 against the other and that the agreement
 cannot be pleaded in law. Were it not for the au-
 18206 thorities I should say that the law is not
 to stop to help those who consent to break it
 18205 I should not reject the law to have them
 18204 both brought before a magistrate and find.
 18203 Black. an officer acting in the capacity of his office
 18202 as a sheriff may justify a battery & even a mur-
 18201 der provided it be done in the exercise of his of-
 18200 fice - and it must appear that it was absolutely
 18199 necessary to the discharge of his duty. The law is
 18198 a perfectly important one who attempts to take

to take it from him if he cannot otherwise pre-
 vent it. But if we actually take property the
 owner can take it only in a forcible man-
 ner. If one attempts to come upon a prop-
 erty, or to enter a house without leave the
 owner may resist and if necessary beat him
 to prevent his approach but if one gets into the
 house or upon the land the owner cannot use
 the beating him off until he first requests
 him to depart. - If one has been in possession
 of land or of a house long enough &c.

as if it were his own the owner cannot & shall
 drive him off with force. If a person resists 185
 another with force or offers violence to him 244
 who attempts to prevent him from doing an 641
 unlawful act the person opposing may have
 an action of assault & battery against him
 who attempted to do the unlawful act.

A parent may moderately correct his child, a
 master his servant or a schoolmaster his pupil.
 But if he greatly exceed the bounds of reason &
 moderation he will be liable to the person injured
 in an action of assault & battery. The great rule
 for determining what is reasonable and mod-
 erate in such cases is the manner in which the
 correction was performed and the instrument

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with which it was inflicted. Undertaking to judge
from the cause for which the punishment was
inflicted may lead to the greatest error. For much
of the punishment might have been justly in-
flicted for the conduct of the child after the pun-
ishment was begun.

Another cause of justification is ~~an~~ ^{an} ~~arrest~~ ^{arrest} ~~demons~~ ^{demons}
trated it was not the first assault. This
is prima facie sufficient defence - and if the Judge
admits to it judgment will be rendered against
him. But he may show by his opinion that
he did not make the first assault or that if
he did the Battery was enormous and highly dis-
proportionate to the provocation. The main prob-
lem is the principle that a man may do what-
ever appears necessary for his own defence. And
2d. if a man sometimes when assaulted and pro-
voked does a little more than is necessary
3d. courts will not generally be nice in distinguishing
4th. But the only difficulty is in determining what
is necessary in the cases which occur for self
defence.

The general issue of Not guilty by the Court Law
means that he did not commit the Battery or
that if he did it was accidental - and in the lat-
ter case it would excuse him. But the Defen-

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if had any matter of justification & plea - Private Wren
As that he did in the discharge of his duty as 1st Lt
a public officer he must plead it specially. In 282
this state such matter of justification may be
given in evidence under the general issue

One recovery in an action of Assault & Battery 1841
bars all future actions which may be brought 11
for damages that afterwards accrue in con-
sequence of the Battery. Where one struck an-
other afterwards they settled - the one who struck
saying to the other &c &c for the injury - After words
in consequence of the wound given - the man who
was struck lost one eye - He then brought an ac-
tion against the man who struck him for the
damage - and the accord with satisfaction was
as a judgment would have been held a good
plea in bar. - If several have joined in com-
mitting a Battery the person injured may
sue as many of them as he pleases or any one
of them but a judgment against any one or
part of them is a bar to any action against
the others. In this it differs from suits upon
Contracts - as upon a Bill of Exchange for the
person liable in a suit against one where
none appears on the bill he may sue any
of the others - or all of them singly till he recovers

22
A sheriff or other public officer in order to justify
a battery committed by him must show a warrant
issued by some authority. — If one procures an
other to commit a battery he is answerable with
him who commits it.

10th
08
10th
025
Releases the action by the party injured for his
damages the party having committed an assault
and battery is liable to a public prosecution and
in this case the party beaten may be a witness
against him. But no action can be made of it
except upon the prosecution in an action by the
party beaten for his damages, in this would
be virtually to cite him to testify in his own cause.
The proceedings are distinct and is dependent
of each other. In the private action it is com-
mon for the Plaintiff to argue not only that
the defendant both injured the Plaintiff but also that
committed a breach of the peace and recovered
damages. This is clearly at least
judged often practice come with the law in the
making the distinction. But with the law as appar-
ent and the proceeding to call the offender
to account for the breach of the peace it might
never be considered in the private action
being prosecution the Plaintiff care the Defendant will go
in relation of damages but parts alone are

never a day without a trial in our courts. It is
a common thing to find a man who has been
married to a woman for many years by whom he
has children in his family - and afterwards he marries
another woman and abuses her - and then brings
an action against him he may justify by showing
in his defence the contracted marriage. In such
cases the law is the same. If several
are said to be together in being concerned in the same
crime both the jury cannot find separate
guilt and give different sentences against different
persons. If of the same kind as in a case of 3d. 13
which was said to be an assault & battery and the law
being both a little alike was the same. And
if it is against a person it cannot be considered
when these are separate. And it is well known
the 1st may have his election which even so will last
long and judgment may be rendered for 10
the court may render judgment for the greater
sum - the rule is the same if several are said
and they plead separate, here the court will
the jury finding them with each separate dif-
ferent sums against them. The 4th case is
not one in which the damages are the same
it may be one of any one concerned in it. Hence
but who are found guilty are some the whole and some the
part. And the law is the same. The court will render judgment for the
greater sum.

Trespass vi et armis lies also in all cases
 of false imprisonment. False imprisonment is
 any forcible detaining of a person against his
 will without lawful authority. This may be done
 in any place as well as by confining one in pris-
 on. An executor or administrator cannot be
 arrested for any debt of the person deceased and
 it was held in one case that the attorney issuing
 the writ as well as the party embarking him was
 answerable for the wrong done. - when a person is
 detained in the house of another - part of the detainer
 necessary attending on him are privileged, and cannot
 be arrested. There now a privileged person
 stands in the same position with respect to false
 imprisonment as an executor or administrator.
 for the officer may not know that they are privileged
 and it seems that he ought not to be liable. Had he
 the knowledge of the privilege he would undoubtedly
 only be liable. And therefore if the person had a
 supersedeas from the court the sheriff would be
 bound to regard it. An officer is bound to know
 the law and his duty but he cannot in all cases
 know persons or know that they are privileged.
 An officer is liable to an action of false imprison-
 ment if he makes an arrest on Sunday because
 he knows it is unlawful. From this it has been

questioned whether if a man possessing this
been on Sunday be arrested by the sheriff at the
indication of his creditor and detained merely
for the purpose of answering him as in an action
day it has been questioned as whether this
arrest would be good. The Court know that the
arrest on the 24th is void and also that in
breaking the law but intends to pay the fine
and keep the man. I think says Judge here
the arrest on Monday being the consequence of
the arrest on Sunday is void. It is similar in
principle to the case of an officer breaking in
to a house and afterwards arresting one in the house
thence says he is liable in damages even
that that the arrest was void yet I cannot be-
lieve this would now be said. It seems very im-
politic to give such encouragement to break these
important regulations of society. If an officer
arrests a different person from the one named in
the writ it renders him liable to this action. But
this seems to be carried too far for where one de-
signedly put himself in the way of the officer. Mr. Dr.
and told him that he was the person and then it
brought his action for false imprisonment and it
was held to lie. If a court direct a writ process
to the sheriff and the defect does not appear upon

the face of the writ the officer is not liable - but
 this liability is a consequence of the defect in the
 defect which renders the process void upon the
 face of it the officer arresting in pursuance
 of such void process is liable for
 false imprisonment to the person arrested. But
 if in this state a writ returnable to a justice of the
 peace the demand in the writ being \$50.00 were directed
 to an officer & should not suppose any other
 that the officer would be liable himself to be
 liable by arresting a person in pursuance of it - because
 it does not appear upon the face of the writ whether
 a matter of this amount is cognizable before a
 justice of the peace or not. & if it is justly it will be
 a matter of law jurisdiction where the sum in
 demand does not exceed \$40.00 - provided the writ
 has two subscribing witnesses and not otherwise.
 I have known there is a case in which there
 is? that if an officer arrests a person under
 a void process he is liable for the false imprison-
 ment whether the debt appears upon the face
 of the process or not. one case is cited in sup-
 port of that decision are by no means antagonistic
 One case put is that if the sheriff should carry a man
 under a writ of execution for a debt of money
 common pleas - he as well as the sheriff would be guilty of murder

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But the process in such case would appear upon the
face of it to be writ for the court of common pleas
and superior to try criminals. I think also that 12th case
in which I have observed - a little the same more 283
been cautious in expressing their opinion as that 25th
case. The following case occurred in this state in 1890
Shunkington presented a petition to the general assembly
on the grounds for an act of imprisonment in his ar-
rest. His attendance was required. In his way
thither he was arrested by an officer under a pro-
cess from the U.S. Court - the Assembly issued a
habeas corpus liberated him and brought him be-
fore them. - A writ of habeas corpus brought an action
of false imprisonment against the officer who
arrested him. - On the part of the officer it was
contended that the Assembly had no power to in-
terfere with the proceedings of the U.S. Court - that
a petition (supplicans the Assembly was power)
was not like a writ in court and therefore that
Shunkington was not privileged from arrest. The
Court took it on the ground that the Assembly was
a court of chancery where the same existed 1800
and as the U.S. Court of chancery gave a priv-
ilege to the suitors by petition this case was held to
be analogous to a petition in inferior court and hence
decided that the imprisonment was false.

But did not decide what it would have been had
not the general action been in various cases a
part of the same.

Treachery in Reality

if treachery is considered as to be shown that
there are no accessories but all in an way con-
sistent either by acting or by indicative others &
all are equally liable for the injury. Where a num-
ber are concerned in the commission of an act of
treachery they are not only as one rule jointly but
severally - and contrary to the rule in contracts
one or more members of the group may be subject to
suit - it is very common to leave out one and make
him a witness & be injured in trials. Precautions
must thus be against all those & those only who
were convicted by the jury & not by the court, there
but it must be decided upon and collected of some
one of them and the whole is collected of
one because not, it would be the case were the
the judgment a joint contract & a variety of
contribution against the others, as noted with
them in the same judgment. This only that there
is no contribution between tort-feasors & not
perhaps in the whole of things a recognition
it may operate as a measure of justice sometimes
and one is much more than some of the others

And the judgment against all is the same
 the execution may be collected of the most rich
 As the other means if there who are the least don't
 to make the most properly then may be unjustly
 seized to pay the whole. But I apprehend not
 the judge the rule is founded in reason for
 when several would combine to perpetrate a re-
 fractory deed each one may feel himself
 to be responsible for all the damages which may
 ensue. Every meddling with the property of
 another is in strictness of law a trespass but if
 no damage is effected there be nominal damages
 only can be recovered and I hardly know says the
 judge whether in such case at the present day
 an action would be sustained. So in strictness
 of law the least entry upon another's land without
 excuse is trespass. There are cases in which a
 man may be liable for the damage resulting
 from an act which the law authorises him to
 perform. As if a man's horse has broken into
 another's field he may take it out but he will be
 liable to an action of trespass if any damage en-
 sues from his being upon the land. So he may
 pull down a fence or a tree upon the land of an-
 other he may be right & the law may but would be liable
 in trespass for cutting the tree. Where the law makes it

the duty of a person to do any thing or a right in
liberty to do it - as an officer to apprehend the hand
101. of another to arrest a man in a prison or in
40 a public house there is no breach of the peace
but a licence in law to do any thing. Where a
man has liberty of the crown to do any act which
respects the property of another he cannot be out-
rigger as a trespasser. This licence in deed may
be express to do a particular act. As a Tenant
at will has a title without any licence but he
is not the subject of a licence from
the owner which excludes the idea of his being a
trespasser. This distinction is to be observed in
all cases between a licence in deed & a licence
in law. That if a person does that which
the law gives him a right to do in pursuance of that licence
& that which he commits a wrong not in
becoming a trespasser at all. In which cases
intention is to be considered and after
knowing the criminal intention of some
women of their mother. They received the act
of entering the house a trespass and also all the
acts they had done in the house as to the injury
rich & wrongfully. If a person enters a public house
40 and then goes into his garden the house
becomes a trespass. But when one has express

have to do any act cannot become a trespasser
in that act at all. The rule in Eng. relative
to cattle taken upon distress for rent is the same
when they are taken in attachment to a replevin
or judgment as it respects making use of the lot
tho' for if the person seizes or does any thing with
the cattle (except it is for their benefit and with
consent) he becomes a trespasser at once. It is to
be understood that to make one a trespasser
it is not sufficient there must have been an actual mis-
feasance. For a bare nonfeasance will not do.
Hence if one goes into a public house for a drink
liquor and goes away without paying for it this
does not make him a trespasser at once. The
following case is said to be an exception to
the rule, if an officer arrests a man but does
not return the writ upon which the arrest was
made till the return day is past the man who
was arrested may sue the officer who arrested
him in damages. This is said to be founded upon
a sentence for not returning the writ. But
even the judge says this is not the foundation. The
real reason is that the officer when sued has
no evidence by which he can exonerate himself
or if sued after the return day is not himself
exonerated by him but a certificate of the return from

the proper officer of the court before which the
suit was returned. But he has no such authori-
ty. Therefore he cannot do this nor can he
do the same general rule.
concurrent before he arrives at some decision.
a verdict or a motion is liable for it. It is
since it would be a fault or blame due
not at all enter into the notion of negligence
that a person of vision is not answerable for
his trespasses unless his will directed him to do
the act - or unless fault or negligence is imput-
able to him or unless he were attempting to com-
mit some other unlawful act. A man may act
with an axe in such circumstances that if the
head flies off from the handle he will be answerable
for any damage which ensues. It is not required
that a man should show due care at the risk that
it would be liable to use - but that he should
use due care and diligence and that he
should not be negligent in his acts. There are
two cases in the books & reported ones the first
where a person is injured others - in one
case the owner of the gun was held to be responsi-
ble and in the other not - each case depending
on its own circumstances. If a man attempts
to do something unlawful, as to shoot his neighbor's horse

But instead of hitting the horse the ball
wounded him and wounded a man. The person who
was guilty of the act the same as he would have done
had he shot the man intentionally. If a man shot
at his dog on another's estate & drove the dog from
himself & wound and the dog after that time
got off from the ground & chased and worried them
the owner of the dog if he endeavored to call it
is not liable in trespass. But a large dog that will
harass and injure cattle may not be kept. He
is not open then. The old law is that one
cannot go upon the land of another for any purpose
base or lawful so far that it is necessary to go
upon the land of another to hunt various kinds of
game if he does any special damage or in digging
the soil cutting timber &c he is an occupier
in trespass. If a man goes upon the land of an-
other by mistake and does damage - as if he
cuts timber or mows grass beyond his bounds on
the adjoining land he is an occupier in trespass.
Some have called this an exception to the rule & say
that there must be an intention or negligence in
order to constitute trespass. I say the law does
not think it an exception to say he is liable if
he goes under the head of negligence. Properly in
the Whistler is not necessary in all cases to support

32
The action is of a man who, whose, is a man who
has a right to the land and he may be liable
and it is not necessary for getting that in
and it is proper that he should be liable for
converting himself by special contract he is
liable over to the owner for the damage. But sup-
pose he has been released by special contract
from liability, & the owner the only action he
can have against one who enters and cuts the
timber is an action of trespass for causing open
wounds. The ground in which he has an interest ^{and}
or would in this case only recover nominal damages
if man is liable to an action of trespass for damage
done to his cattle upon another's ground. Where a
man finds cattle upon his land damage for which
he may bring an action of trespass against the
owner - or he may impound the cattle but he can-
not do both. Should the cattle die in pound with-
out his fault he may then have an action of trespass
but if the cattle impounded escape the person
impounding them can have no action of trespass
unless the escape is due to his negligence or
neglect without his fault or negligence. If the
cattle is liable for the damage a man's cattle
taken to him to be sold - and if the owner of the
cattle has a recovery against the owner

the assize will be liable over to him. The
was with a notice. Where a man was sent
in, to come to a house and see his sick daughter
& entered the house without knocking it was
held to be trespass. But even the notice at the pre-
sent assize I think it would be held otherwise. Tres-
pass lies against one who enters a house and disturbs
the peace, or takes goods, or any thing which is not
legal or right by warrant. It seems that in the
Secretaries of State case at some period exer-
cised the power of granting warrants to persons
to search for the papers of persons wherever they
could be found. But it is now settled that no person
in the government now, power to grant a general
such warrant. As the law is now settled, that
no officer can grant a search warrant unless
the person procuring it will make oath that he
has had good reason and that he has some rea-
son to believe there are in some particular place
or house, or it is not necessary to point out par-
ticular apartments in the house. To make the pro-
ceeding lawful the warrant legal it must be
executed in the due time by a proper officer
for a magistrate cannot constitute one for this
purpose and it must be executed in the pres-
ence of the inferior.

in some cases there is a great distinction
existing between returning the property with
and without the value. Suppose a man
sells a 100 pound instrument and attaches
property to the amount of a hundred dollars.
He then is asked the price which he is willing
to give for it. He says he is willing to give
500 dollars. If an officer is asked the price
of such an instrument he is asked to give
the price of the instrument and does the person to
attach on the same and will be required to give
the same price as the person who is giving
the instrument. He might be asked that the
price after bail was offered and returned as the
price and therefore make him guilty of the same
crime. But the law considers it as a mere non-
feasance since he is not receiving of bail and therefore
attach on the case would be the same as
attach. A laborer is engaged to cut timber
to cut timber trees only contract for specific
timber. But if he cuts them without
the tract he is liable to the owner in an action of
waste only. The reason is that till the trees are
cut they are not property and the action is
in the proper action for the destruction of real property.
But if the trees are cut and are a waste

I think know how long was the, judge
 and then become more perfect and if the
 case then carry them over, he would be a n-
 reversible in an action of trespass or of arms.
 But if a tenant at will or mit's voluntary joint
 waste an action of trespass or of arms lies 37
 against him. The reason is that in estate re-
 terming by the commission of waste.

It is an established rule and as to perhaps 2. How
 as the common law itself that if a public 28
 road is obstructed and renders impassable as 1. 28
 on being removed or other cause persons may 284
 go into adjacent lots - pass on and come into the
 road again as soon as convenient and not be li-
 able to the owner of the land - This rule is not Douc.
 applicable to a private way. If a man has
 the right of herbage upon land - as if he hires
 a farm - yet he has an action of trespass ag-
 ainst any one who injures the herbage or comes
 upon the land. - The one who has the herbage has 130th
 a kind of special property in the land and here
 we may note a remarkable difference between re-
 al and special property. If the owner of the land
 turn his cattle upon the land he who has the
 right to the herbage may have an action of tres-
 pass ²² against him. But he who has a special property

in this instance can never have an action of
 trespass against him who has the several property.
 I should not say the foregoing the reason of this
 distinction. It is a question which has been some
 what agitated in this country, whether a man who
 takes land upon shares may have an action there-
 by against any one who comes upon the land and
 injures the crop - or whether the action belongs to
 402 him who owns the land. The book here mentions
 411 clear upon the subject but my judge here thinks
 either might give the action. I therefore there
 8 Bar is an implied consent of the owner that one may
 1556 be in possession of land. he in possession may have
 an action of trespass against any trespasser upon
 the land - as a lessee who holds over his time
 but one who wrongfully gets into a place, he can
 cannot immediately maintain trespass against
 one who disturbs the possession. When the property
 of joint tenants (or tenants in common in joint tenancy)
 or copartners is injured all the owners must join
 in bringing an action. By our law in cases of joint
 tenancy they may join or not join in bringing an action.

But the common law no person can have an action of
 trespass for an injury done to real property unless
 he is in possession of the land. I should have said that
 this rule is not applicable here - but if a person

has purchased a piece of land he may maintain trespass for an injury done to it tho he has never been upon it. By the English law a person has a property in animals for as long as they live and he may have an action of trespass against one who comes upon the ground and kills them. But his property in such animals ceases at the moment they voluntarily go off from his ground. I believe says the judge no law has ever been recognised here by which a man claims wild animals or any right or interest in them.

It has been decided in this state that an executor or administrator may bring trespass for damage done to the realty in the lifetime of the testator - but quere whether this decision was according to the principles of the com. law - for in this state the executor is considered as agent for the deceased and the creditors legatees &c. - In Eng. he is only agent for the deceased.

As to Replevin the present form of the action in England arose principally from the Statute of Westminster second. Its object is to prevent the abuse of that privilege which the law allows to the landlord to distress the cattle of his tenants for rent arrears. The distress was formerly taken only as a pledge or

secondly for the payment of the rent - and there
was no restraint upon the land & for which his
distress was to answer a rent whatever - or whether
rent was in arrears or not. Hence the writ of
replevin was at once the remedy - the paper giving
the land with sufficient security to pay what was
found to be due he should take back the cattle
into his possession - It is now the case it is a case
to appear in court and to show that no rent was
due if that were the case. The person who made
the distress appears in this action in somewhat
of the nature of a Plaintiff and makes averment
acknowledges taking the cattle and justifies it
and is generally called the defendant. If it appears
that rent was due judgment is rendered accordingly
and the bond given at the time the cattle were
taken for the writ of replevin is a collateral secu-
rity to the payment of that judgment. This is
a brief history of the action of replevin and al-
tho no such process as a distress for rent
is known to the law of this country yet both here
and in England the action of replevin is used in
another case and that is for cattle taken damage
feasant. When a man finds cattle damage feasant
on his land he has given him his election of two re-
medies - he may either bring an action of

trespass against the owner of the cattle
 or he may impound the cattle as a security for
 the payment of the damage and retain them
 till it is paid. But if the owner of the cattle and
 the person who has taken them cannot agree
 as to the quantum of damages the owner of the
 cattle may have a writ of replevin and thereby
 recover the possession of his cattle. & this writ
 may be granted before the cattle are actually im-
 pounder and the officer may take them while on
 their way to the pound. In this case as in that of
 replevin a distress for rent the owner of the cat-
 tle must give a bond with sufficient surety that
 he will pay whatever shall be adjudged against him.
 This gives him an opportunity for a trial respecting
 the damages and here the person taking the cattle
 makes a wrong and as a plaintiff claims damages
 if it appears that no damage was done the act of
 taking the cattle was a trespass vi et armis and
 judgment will be rendered against the account
 that he pay just cost to the plaintiff in replevin.
 The rule is the same respecting a distress for rent
 if no rent is found to be due. The owner of the cattle
 may plead any matter in his power to show that
 the account had no right to take the cattle as
 that the account did not own the land upon which

the cattle were & and damage in a tit. And in
such case the title to the land may be collaterally
tried. When judgment is rendered against the
defendant or owner of the cattle execution will
issue upon such judgment as upon any other
& upon return of which the warrant has his rem-
edy against the surety in the bond. — As the
law has determined what shall be a legal fence
if the fence were deficient the general rule is that
the owner of the land can recover no damage or
he has no right to impound the cattle which en-
ter his enclosure. If however some part of the
fence is legal and the other is not and proof can
be made that the cattle entered where the fence
is legal it will justify the impounding — or will
entitle him to damages done to them.

Some cattle by the Common Law are reckoned com-
monable and may run at large in the highway,
others are not commonable as horses & swine — But
there is a difference between horses & swine — Hor-
ses may not be taken up in the highway and im-
pounded — but if they break into an enclosure tho
the fence is not legal the owner of the enclosure may
imprison them. But if a hog is found in the high-
way it may be taken up & are now and impoun-
ded by a Statute of this State each Town may

make different regulations respecting Private Horses
their owners. Most of the towns have by their bye
laws allowed swine to run at large provided
they be chained and ~~run~~ in their noses. A question
then arose whether if swine and their implements
might be law and in that condition, could en-
ter an inclosure - the owner of the inclosure might
injure them which would make them subject
to the same rule as horses are. This question was
decided differently by different justices and was
unsettled for perhaps forty years. Finally a writ
of error was brought to the superior court which
decided that they might be impounded if the
fence were not sufficient.

In most or all of the United States the rule of
attaching property to secure a judgment has
been introduced. This is unknown to the common law
but is found among our earliest statutes and is
a very useful regulation. If a debtor shows
personal property sufficient the officer is obliged
to take it and cannot take his body. When
a creditor attaches property & seizes a judg-
ment - the debtor upon offering a bond with suf-
ficient surety to answer the judgment is enti-
tled to a writ of redress by which the officer is
directed to restore the property attached. Debtors
can hardly be called in question as to their

do not appear in court — it is merely a taking
 of the case in court before which the original
 action is to be brought. This bond is to the cred-
 itor a security equal to the actual value of
 the property. And if after the judgment in prop-
 erty can be found to satisfy the execution the cred-
 itor has an action against the surety & the bond.
 A question may arise on this subject where
 the value of the property attached does not equal
 the amount of the judgment. Suppose it owes
 \$100 & \$1000. An action against him
 and attaches property only to the amount of \$200
 & releases the property and becomes merely
 upon the bond. Judgment is rendered against
 it for the whole and he has nothing to satisfy
 the execution — the question is whether he is
 liable to the amount of the judgment — or whether
 he is only liable to the value of the property se-
 ized. There has been no judicial decision on this
 question. According to the letter of the statute
 he would be answerable to the amount. The judg-
 ment says ^{the} full and entire construction of it says the
 judge. I cannot think he would be liable for the
 full amount where property is taken by an attach-
 ment against it and he cannot replace it. His rem-
 edy is only to sue in action a trespass against the
 officer.

Trespass on the Case

Trespass on the case and action on the case are the same tho some attempts have been made to distinguish them. This action did not exist at common law but was introduced by statute. Before the introduction of this action the maxim of the English law that for every injury there is a remedy - was not true and this action was framed to supply the defect. The best definition perhaps which has been given of the action is that it is an action which lies in all cases for injuries effected without force but merely in consequence, unless there is a remedy for some of the actions which existed at common law. These injuries may arise from positive acts or from neglect of duty. Injuries proceeding from neglect of duty are the ground of a *troubaunt* and ^{they} as ~~it~~ relates to breaches of contract were considered 354 under the title of contracts. This is said to be the proper action for obtaining redress in cases of negligent injuries resulting from negligent acts. Thus if one man crosses one man's land and causes the land of another - the person whose land he crosses has no right to divert the course of the water and prevent its running upon the land of the man below. So also if one puts a stream into a course which

carries the water so as to cause it to run upon
 and injure the premises of another. In these and
 like cases trespass on the case is the action to be
 brought. But to call the act of directing the wa-
 ter from another land - or directing water upon
 another land to a great nuisance seems to be an
 inaccurate expression. The more we can, properly
 say is that the act would be lawful did they in-
 jure nobody in the circumstances or at times from
 them. In all cases where one is answerable for
 a tort, duty he has an obligation imposed up-
 on him either by himself or by the law. If a
 person discovers lost property, he is under obligation to
 take it, yet if he does take it the law imposes a duty
 upon him of taking some care of it - and that the
 injury is in fact a tort is no excuse if the person
 has not exercised that care over it which the law
 imposes. As if one rides a horse apt to kick or
 strike into a place where people resort - he is liable
 for the injury the horse may occasion. So if one
 should leave logs or other things on the road and
 the horse or man is injured upon it - or over them in-
 jured the night or in the day time the person leaving
 them is responsible for the consequential injury.
 There may be cases where the person receiving the
 injury is guilty of such fault as to be responsible
 but the person who was near to the remote cause

of the injury will not be responsible, if one
one carried timber for another who wanted a place
place - but was not at the place appointed at the time
time and the horses of the carrier were injured, 100
standing in the cell and one of them died in
consequence. It was held in this case that an
action would not lie - for he might have left
the timber and took care of his horses. Some
years since a judge there a Physician in the
doing a man pricked an artery by which the pa-
tient, his arm - an action was brought against
the Physician - as it appeared in court that the
artery was in different situation from that in
which they usually are not always are I suppose
that the action would not lie - but the court took it
for granted that there was some negligence and
supported the action. If an injury is done to
the public in general as by fencing up a highway,
unless the Plaintiff alleges and proves some spe-
cial damage done to himself, he cannot recover.
This is where the action is purely civil - and per-
haps will not apply in a writ of mandamus.
A Physician is liable where he does not use prop-
er care and attention. And may be perhaps in a
plain case for want of skill. In England if a per-
son will employ a Physician not licensed by their
medical Institutions, he can recover nothing from

him for injurious consequences resulting from
his want of skill. I have not yet the Judge who
the same rule would not apply in those of the third
where injuries & accidents are not inflicted. If
120 the owner of a dog is liable for an injury to a contract
130 of goods & for an injury to a person - an action on the case will
lie for not accomplishing the duty on the ground
of the express contract. An action on the case
will lie against one for selling unwholesome li-
140 quor or provisions from which damage results
150 to the purchaser. This does not mean that a person
160 may not sell provisions which are in a condition
170 known to the parties to be unwholesome and sold
180 as such. A person who keeps animals, ferocious
190 horn is liable for damage or injuries they do.
There is this difference between those animals &
animals of the domestic kind that if damage
is done by the former the owner is liable at all
200 events but if by the latter the owner cannot be
210 subjected to the damage unless it is shown that he
220 had a knowledge that the animals had done mis-
230 chief of a similar nature before. It is said however
that there are some wild animals man's nature
240 the nature of which is not generally to do mis-
250 chief and that the rule for the subjecting the owner
for any injury done by them is the same as that
respecting domestic animals. I respect on the case

69
they are injuries done to animals either Private Wrongs
to persons or their animals - the in their nature
they seem to be some with force as much as
those done to cattle or cows upon a man's land.
The reason of this distinction may be that
before the introduction of Cattle there was no
way to recover damages for an injury, conse-
quentially more so - or done by a man's beast distinct
from those done by the man himself - and there-
fore when cattle broke into an enclosure, from
necessity they decided the trespass to be done by the
man with his cattle. As if a dog should injure a
cow & kill a dog the owner of the dog cannot re-
cover & yet he show that the dog had been accus-
tomed to bite cattle and that the owner was a
prizee of it. It is not necessary to recover that
the dog had bitten creatures of the same
kind - but that he has bitten other creatures. His
dog ought not to be sufficient. By the English law
a man may set a small dog upon cattle
to drive them from his land but he may not
set on a Mastiff or a large dog which will
bite and mangle them. I know not any
judge whether or no this distinction has been
recognized in our law. or whether it is respon-
sible for the to recover a man's under the sheriff or a
Deputy Sheriff - but this distinction is

Case

This distinction is generally admitted between principals and those employed by them to transact business. If an agent engages to transport his goods to a certain place & employs one to drive the team who drives carelessly and burns the goods, liability will lie against the driver and

100.8

Case against the agent. So some reason on the 175

175 that an agent or deputy is liable only for his wrongs 18

18 but for bare neglect or misfeasance as if a deputy does not return a writ or does not arrest a man when it is in his power to do it.

An action will lie only against the sheriff or principal. But if a deputy when he takes

175 a writ expressly engages that he will or will not return it a failure will constitute a

negligence on the part of the sheriff. If an under officer instead of serving the writ discovers it

that is a wrong act for which an action will lie against him and also against the principal.

Escapes are either voluntary or involuntary when the prisoner frees himself by some means save by the

175 act of God or that of public enemies - or they become involuntary when the jailer negligently allows him to escape. It is called a negligent escape

81 when the jailer negligently allows the prisoner to escape where the sheriff or jailer intentionally permits him to depart.

But however voluntary or involuntary escapes are considered

74
process - but upon mean process the officer
may return record - and this will excuse
him. On final process he is not permitted to
make any return to excuse himself except
on the issues above mentioned. The reason of
the distinction between mean & final process
is that in the latter the officer has had oppor-
tunity to call the man committed to his custody
after a voluntary escape the officer cannot
relieve the prisoner but must pay the debt
for which he was confined at all events. But in
an action for negligent escape he may plead
fresh pursuit and as the law now is - if he had
the man in jail before the action, for a escape
was commenced it is sufficient. If a prisoner is
committed to jail and the prisoner suffers a vol-
untary escape either he or the sheriff is liable
in treble & the creditors according to the common
law when a man in a civil suit was taken up
on mean process the officer might permit him
to go provided he gave him records so that execution
might be levied upon him. but upon final process
he may not permit him to stir from confinement.
There cannot be an escape till there has been
an arrest. To make a legal arrest there must be
an actual touching ^{the} of the person arrested
if however the officer tells the man in business

and he answers that he will assist him and does, & out & go with him the commission but
 18. mission is held & he is arrested. It is not necessary
 19. that the officer charged with the process
 64 should himself touch the person but it is necessary
 to an officer employed to him & assist in taking
 the presence of the officer is himself assisting
 in the business. If he is not in sight. The
 person who touches the person need not produce
 the warrant but he must disclose his business.
 The common respect for the entry of
 houses to make arrests is adopted in this country
 an officer cannot lawfully break an outward
 door to enter and arrest a person upon civil
 process. By this is not meant that he may not lift
 a latch & enter without knocking, but that he may
 not enter where the door is fastened by something
 obviously meant to obstruct entrance. This rule
 is strict and admits no possibility of exception
 in favor of the officer. This rule is not founded
 upon a principle of screening the debtor from
 arrest but it is to prevent the terror and unhappiness
 which might be occasioned to families were
 their habitations liable to be entered by public
 officers. Another reason applicable only to popu-
 lar cities is that thieves might be lurking
 about and were a house broken open especially

in the night - they would have the opportunity to enter and rattle the house. But perhaps the real reason of the rule is that it originated with the Crown - whose broad spirit of liberty would not suffer such rude intrusion into a man's Domicil. If an officer has entered an outer door he may after making a solemn demand of entry, justly breaking an inner door to make an arrest. If the owner of the house harbours a thief when the officer may break an outer door to arrest him - for a man shall not shelter another from justice. If a person once arrested makes an escape the officer may break the outer door of the house to retake him. This privilege of the outer door extends only to a man's domicile and not to any adjacent Shop or other building to which he may betake himself for protection. The inner doors of a public house are under the same protection of the law as the outer doors of any other house and the consideration that they are the lodgings of travellers renders it reasonable. It seems to have been formerly held in England that if an officer broke an outer door and arrested a person the arrest would be good altho the officer would be answerable in trespass for breaking the door.

chap. 1

that the case of *Carroll* and *the United States* is
 to suppose that is not at present considered to be
 law. The door which was an inner door to an
 apartment in a house in which *Carroll* had taken
 refuge was broken and *Carroll* was arrested.
 He moved the court to be discharged on the ground
 that the arrest was illegal. But the court decided
 that the arrest was legal because the officer had
 a right to break open the door. Alid the principle
 been admitted in this case that the arrest would
 have been legal - tho the officer had no right to break
 the door the motion would not properly have
 led to a discussion concerning the legality of the
 latter act. I do not think says Judge *Pierpont* it
 would be considered law at present. Where the
 law prohibits a man from doing an act - it an-
 9 g not be said, police to permit him to derive ad-
 4 vantage from breaking that law. Suppose a
 man be horse by a wrongful possession - B finds it
 riding the horse - knocks him off and takes the
 horse - B will keep the horse and C cannot re-
 cover only for the assault & battery. There are cases
 however where this principle is controverted.

It may be further observed respecting escapes
 that altho an officer cannot have an action a-
 gainst a person after a voluntary escape of such
 person yet the creditor at whose suit he was confined

may if he chooses, proceed against him again.
It is a question which has been much agitated in
this State whether if a prisoner who has the lib-
erty of the yard - or as called in England the rules
of the prison goes beyond the limits and return
before an action is commenced against the Sheriff
whether he saw the going beyond the limits in such
a manner that is a negligent escape - and whether
the prisoners voluntary return equivalent to
a retaking by the officer on fresh pursuit. At the
voluntary return of the prisoner before action com-
menced against the Sheriff by the creditor - at
which suit the prisoner was confined - saves the
Sheriff from responsibility and bars the action. At the
same time this question first arose in this State the
English books contained nothing decisive upon
the subject the English books contained nothing
decisive upon the subject and our courts deci-
ded once or twice that the going over the limits
was a voluntary escape. They have since decided
that it is only a negligent escape and that the
prisoners voluntary return is equivalent to a 2d term
retaking upon fresh pursuit. And this is in accord
with the late English decisions. After the prisoner 2^d time
has been once out of the limits & the liberties of the
liberties of the prison the Sheriff is bound to com-
mit him to new confinement. If he does not and

the prisoner goes out again it is a voluntary
 escape. If the officer permits the prisoner to go
 and afterwards the Plaintiff sues for the escape
 their assent of the Plaintiff subsequent to the escape does
 not alter the case for he may still have his elec-
 tion to proceed either against the person escaping
 or the officer. There is no law compelling the
 Sheriff to allow the liberty of the ward to a pris-
 oner but the practice is founded merely on cus-
 tom - and where the prisoner procures a person
 of sufficient responsibility to give bonds for his
 keeping within the liberties of the prison it is
 common for the Sheriff to grant him the liberty of
 the ward - If however the prisoner should mani-
 fest an intention not to stay within the liber-
 ties of the prison it would be the duty of the Sheriff
 to put him in close confinement. If on mean pro-
 ceed a prisoner is removed from the custody of the
 Sheriff the creditor may proceed against the
 person and the jury may give the damages
 as they please. They may give the whole or
 they may give part if it appears that the pris-
 oner can be retaken - but no action will lie in this
 case be against the Sheriff. If the prisoner is re-
 moved on final process the Plaintiff may proceed either
 against the person or against the Sheriff at his
 election. In neither case the case against the Sheriff

for an escape the practice in such cases is
 it is the duty to show that it is more or less than
 but for consideration the value of the case
 of however much it is brought the Plaintiff 2th.
 must recover the whole sum due. The same rule 120
 says the Judge I think ought to be where there is
 brought in the 2d. ground against the Sheriff 2th.
 action on the case and recover almost the whole 125
 that is the more this process against the
 Plaintiff will recover the whole sum due. The mo-
 re recovered of the Sheriff in such case is only
 a small matter. In such case the Sheriff makes
 the writ as strong as he dares - and is responsible
 and he is responsible for all that he does from it.
 Now the writs are writs and a writ is to the re-
 line counties which carries an writ to Creditors
 where actions cannot be done of the writ and
 the Sheriff is not responsible unless where there
 has been some fault or negligence in him or
 his agents. In actions by Creditors for goods it
 has been the practice of our courts to give at best
 trifling damages where the person owing was
 unable to pay the debt. And on the other hand
 if the debt was able to pay and perhaps might
 be paid against him the court give but small
 damages because the creditor was negligent
 in not suing for recovery. I think it is

the action for an escape almost everywhere
 but was the law as to the lien on the
 subject is returning back to the rules of the com-
 mon law. If the sheriff has seized and the
 creditor cannot attempt to recover of the sheriff,
 60 E. it has been a question whether the sheriff could
 50 maintain an action against the escapee. But
 it is now settled that he may on account of the li-
 ability which he is constantly under the exercise
 of the sheriff in such case and the sheriff and
 escapee are liable and then the creditor sues the
 debtor and recovers the debt again - the Debtor
 may now sue an action to money paid & received
 against the sheriff & recover back the money paid
 upon the judgment for the escape. This is an in-
 stance in which money paid according to the
 judgment of a court may be recovered back
 without impeaching in the least the rectitude
 10 of such judgment. Case lies against an officer
 for not serving a writ directed to him or ser-
 ving a false return on it. The return of
 80 an officer is not good if the writ is always
 prima facie evidence of service but may be
 set aside by the court. But an under
 officer or sheriff is not liable in such cases of mis-
 service or neglect unless he has made an ex-
 press contract binding himself to the performance
 of such duty.

This action lies also against other Private Persons
officers & servants for neglect & default, & an At-
torney is embroiled and there is malice and
neglect & negligent suffers damage as here a debt
he was to have collected so he was commencing
a suit till the debt is paid or a debt
not charge the defendant in execution when
he might but suffers him to escape out of the
jurisdiction or his property to be removed if
if the defendant removes his property it will
be of no avail that his debt is held in execution
tion) in either case the attorney is responsible
to the client. But if an Attorney acts honestly
and faithfully he is not answerable for his own
mistakes or errors. The general rule of damages in
the case above mentioned is the value of the
debt lost in such respect. There are many cases
where it is not right that the whole amount of
the debt should be recovered - and it is generally
left to the jury to estimate the damages as they
think proper upon the whole circumstances of
the case. Case lies against a solicitor & the recovery is not
not proper in a suit of his mind unless it be
as the law requires - as if he refuses to sign a writ
when required. Case lies in the proper action of the
for a breach of trust as well where there is no ex-
press contract as where there is, & where there is

a violation of the established custom existing in
the neighbourhood of the house. This is the proper
action. Damages may be obtained. There are
some injuries affecting real property for which
there is the proper action as for nuisances when
a recovery may be had for the damage done
if it has been continued and if the nuisance was not
removed he may commence a further action and
continue to bring actions till the defendant re-
moves the nuisance. It may be a case as
115 101 for example the defendant built a wall across the
116 102 same road & thereby - and it is applicable
117 103 to the case in the 10th - for in either it must
be expected that that house may obstruct the
light & so on. It may be doubtful how long a house
must stand to be called a nuisance. It is in fact
more difficult to say it is sufficient. Perhaps it may
mean that there shall be no person who can re-
collect a time when there was not a house in
that place. I know not how they decide that we
have any house that would be called ancient or
that we have any law upon this subject. This rule
never applies better here and in Ireland - that if
a man builds a house and so it is no more not build
another so near as to obstruct the light of the first.
In a case where an action would lie for a nuisance
to remove the light may bring it as well as the

higher and each will recover according
 to his respective damages. The same action shall
 lie for erecting a mill dam and damming 50
 in it - when it shall be proved that a direct injury
 shall be done to the plaintiff's estate by the damming
 upon one's own land so as to injure the lands of
 other persons adjoining. If a person may not 101
 erect a dam for building a mill or other purpose
 by which the water is made to overflow the land
 of another. In general the owner who is injured
 may not pull down the dam as he may the mill
 dam but must seek redress by legal proceedings
 yet where the overflowage of the water would do some
 great and ancient injury the same might be put
 down. So if a dam is erected by which the
 water becomes stagnant so as to render the ad-
 jacent country unhealthy, it is a public nuisance
 and may be pulled down - Respecting streams
 of water riparian is the great principle by which
 right is determined - where one man erects a dam
 of water for any purpose no person may do any
 thing to such stream which will increase the
 that use which the first had acquired. If one
 has used a water his cattle at a stream of water
 for upon his own land within the distance he may
 have an action on the case against any one who
 should be pulled down - etc. or he may obtain an injunction

1. Will render it useful for a water-mill, place. Then he
174 erected a mill upon a stream. The water, per-
406. son may build a mill and use the water on the
84 stream above, yet he may change the course
60.2 change the course of the water so as to prevent it
84-106 coming to the mill below. In the first settlement
a stream in the state ran the gauge a man is
digging in the river and opened a course parallel
which increased the water above that it was suf-
ficient to run a mill. The owner of the land upon
which the stream flowed erected a mill upon it.
After the death of the man who found the stream
his heirs diverted the course of the water from
the mill below. The owner of the mill brought
an action on the case and recovered damages in
the district court where, Judge M. J. McLaughlin
in the supreme court of error. This action was
disallowed as it was obstructing the high
water, it is not an action for special contract
to me, which might be a nuisance, but for
that it was a contract, not a nuisance. It is an
injury, not a nuisance and may be held
in trespass. It is a contract, not a nuisance
and it is a nuisance that there is no nuisance
170, 80 it is not a nuisance without going upon the land of
the grantor - the grantor, no, because given the grantor
a right way across the land of the grantor.

and the husband of the wife for entering away
 her husband's wife, & so on not - but says
 the husband is not a wife's wife, & that
 the wife is not a wife's wife. The
 husband is not a wife's wife against one
 for leaving his wife for another. The
 ground of this action is the fact of marriage
 is essential to the husband's wife and it is said
 to be an action of trespass in the nature of a
 tort on the wife, per quod ^{confortium} ~~confortium~~ a wife
 the husband cannot have a claim for the loss of
 his wife's services. But the husband and wife
 must live together in a husband and wife
 relationship and must be married to each other. Therefore should
 the husband be married to another woman the action
 the defendant might be liable to the action for
 when the husband. There is one exception to this rule
 in common law which the husband may have for
 detaining his wife from him and this is with
 a wife - the term of this action is a per quod de loss
 of service must not only be lost but a declaration
 but never on trial - it must be proved that the
 daughter before her husband's service at least
 some trifling service in his father's family. But
 this is merely form for as to the real loss of service no
 regard is paid on questions of damages - but the real
 question is the loss of service the real action is a declaration

of the family the removal of the daughter
 and the divorce brought upon them the same
 the grief and shame which attend a divorce.
 It has been held that trespass vi et armis would
 lie for this injury. But it is now settled that it is not
 in the proper action. If the action of the father for
 house were illegal an action of trespass might
 be brought for breaking and entering the house
 and the injury done to the daughter might
 be matter of aggravation. The age of the daughter
 is not material and it has been held that where
 she was thirty years old. She it seems
 to have been held that the daughter must be
 living with her father. See *Boyle v. Boyle* 1378
 Hard. It is thought that in such cases that he
 must sustain the action. It seems that action
 may be brought by a relative of the daughter
 standing in loco parentis. It is supposed that
 an action on the case for provocation might be
 sustained for seducing the daughter away
 from her father's house and that both here
 and where the action is vi et armis the injury
 the house occasioned must be proved as a separate
 as aggravation of the first ill-treatment. The
 daughter did not follow. The daughter is not a
 competent witness. The damages are
 generally large in all actions of this kind.

sure the law is not to be used to punish the free
 man who is entitled to give. It would
 seem that it is a public injury rather than a
 private or individual injury when votes given
 6 Lem. in an election are suppressed. However, the law in
 such case gives the candidate who is depriv-
 11 Ch. ed of the vote an action in which he recovers
 99 damages. His action lies also for making a
 10 Ch. false return of persons elected to an office. And
 60- very occasionally the law gives to a freeman who
 11 Ch. is denied the right of voting an action on this
 67- case against those who prevent him from exer-
 cising his right. This is not the proper action
 for obtaining redress in cases where those rights
 are violated which the law gives to ~~an~~ author-
 for enjoying the sole benefit of his own works. These
 rights are now set off both here and in Ireland by
 statute. The question was once much agitated in
 Ireland whether a candidate had the sole and
 11 Ch. exclusive right of publishing his works at Com.
 2000 Law and if he had whether that right was taken
 8000 away by the Stat. of 1800. Eight out of the nine judges
 11 Ch. decided that the common law allowed the au-
 3-2- thor the exclusive privilege of publishing his own
 11 Ch. works. The Stat. of 1800 limited it to fourteen
 years. This is not the case in Ireland. There are some remedies
 11 Ch. in Ireland but not such as in some other countries. The common law action
 11 Ch. for damages for libel or slander is not available in Ireland.

e Mandamus

The general nature of a Mandamus is that it issues from some court to an inferior court commanding them to do justice in cases where it is alleged, or it is directed to a person or corporation commanding them to do something therein specified as pertaining to their office and duty. In Eng. this writ may come from any of the superior courts as the King's Bench or Common Pleas. It was formerly disputed whether or no it might issue from the Court of Chancery — but a Statute now given it the power. In the United States it issues from the supreme & circuit courts. — In Connecticut it issues from the superior court — and also to the Legislature. In England every subject is entitled to this writ on proper cause shown to the court & it ought always to be granted as soon as justice can not be attained without it. A Mandamus does not give to anyone more private rights between individuals as matters of contract because there are other remedies for these. But it lies to restore a person to some public right or franchise or for the obtaining of some public privilege. As if one has a right to an election which the Clerk of the court refuses to issue on, or upon application or if an attorney is refused admission

to practice in a court to which he has been admitted a mandamus lies to compel the one and for compelling him to join in the other. So if the officers of the peace refuse or neglect to a writ in those cases where the law makes it their duty this writ lies to compel them. Also where one is elected a Mayor or alderman or member of any corporation a mandamus lies to compel his admission. And it will lie to compel the proper officers to elect a Mayor or alderman and for many other purposes of a similar nature. It will also lie to compel a town to receive a debt because by the common law a town is not like a corporation capable. The proceedings on a mandamus may be explained by an example as suppose a man purchased land of B and on application to the clerk to have the deed recorded the clerk refuses to record it because he supposes the conveyance was fraudulent. or for refusing to record it may sue immediately on the clerk and recover damages for the duty of the clerk is not to judge of the nature of the conveyance but to record the deeds presented to him without either refusing to record the deed or recover damages for not recording the deed. it therefore makes application to the court for a mandamus and states the facts and the circumstances.

et male is usually made directing the party
to show cause &c. — & if this is a mandatory Writ Com
protest of clerk in the clerk the court will issue 100
a mandamus to him commanding him to
to record the deed or to show to the court
cause where document. If to that alternative
with the clerk makes no return at a certain time
a peremptory mandamus issue commanding
him to do the thing absolutely to which no re-
turn will be admitted but a certificate of obe-
dience. And if he makes no return or does not
perform what is commanded he is punishable
in contempt but the object of the attachment is
not arrest as a punishment it is to compel the
party to perform the command. The return of
the party may be verified by oath and if the cause
assigned for non performance appears to be in suf-
ficient then a peremptory mandamus issue. If the
cause assigned in the answer is sufficient but the
Commissioner the court proceeds in particular get the
person returning the mandamus might use the
party for making a false return and if found by
a jury to be false the plaintiff recovers damages
for the injury sustained and also a peremptory
mandamus against the defendant. But now by
Stat. Ann. the court issuing the mandamus may
take issue upon plead to a denial to the return.

and the parties proceed on the trial as upon any other action on the case and if the answer is found true the party making the answer shall be discharged with judgment for his costs but if found to be false either upon trial or without trial the party making the same shall be adjudged to pay his costs and also a sum of money as damages. This latter method has been adopted in Connecticut altho there is no statute authorizing it.

Habere Corpus

One sort of *habeas corpus* is one directed to a person who is in another's custody commanding him to bring the prisoner with the cause of his detention before the court from which he is detained. It is writ as of course either upon the application of the prisoner himself or of any person having a right to require his attendance at any court. If this writ there are several species as 1st the *habeas corpus ad respondendum* which issues at the request of a person having a cause of action against another confined by the process of some inferior court to summon him to a higher court that he may be charged with a new action. 2^d the *habeas corpus ad satisfaciendum* which issues where the prisoner has had judgment against him in an action and the writ is then to bring him up to some superior

court to charge him in execution.

8. The Habeas corpus act is in the same manner in England out of the Courts of Westminster Hall when a person is in any inferior court and wishes to remove the cause to some superior court to be there decided. These three species of Habeas corpus are not in use in this state. In the second we have a writ by the officer who is in execution on the prisoner without imprisonment. Neither have we use for the third species as we have writs which have in civil cases originally in current jurisdiction. Hence actions are removed from a inferior to a superior court by a writ of Habeas corpus is by writ of error. A fourth kind of Habeas corpus certiorari is ad testificandum which is a writ to a party in any suit to produce a prisoner 17 48 as a witness. The Habeas corpus ad subjectionem is of the most importance. It issues to any person holding the body of another in custody commanding him to produce the body of the prisoner with the day and cause of his capture and detention and satisfaction subjectionem et recipiendum whatever the court from which the writ issues shall adjudge. In case of the bench cannot be made 8. 5. 2. one imprisoned to the House of Lords as a contempt 3. 1. as the writ is in like manner their members. In all other cases of imprisonment the Court of

Atticus T. Grant

1797. American and a man to which may give the writer
 1798 one that of the same place in England a man re-
 1799 sident in a person which he were surprised by that
 1800 least. In immediate there were a great deal
 1801 and have to want a paper upon. Both the
 Supreme and District court of the United States
 have power to issue this writ in cases of commit-
 ments proceeding from the power of the United States
 The State of New York. It is in this considered
 as a second offense in the United States and is
 more than a violation of the law of the land
 It is contrary to the Statute that you are the
 Judge, Judge of the Law of the land in regard to
 a habeas corpus in execution. It is not in the
 power of the Court to issue a writ of habeas corpus
 upon which if the offense in which he was com-
 mitted is capital he shall admit himself to bail.
 This writ extends also to children, from parents
 and wants illegally detained in the United States
 one under which case they are placed as a habeas
 corpus in execution. When arrested ^{by a law} ~~by a law~~
 the person is taken to court to be tried, and
 the trial is the power of the court to issue a writ
 admit him to bail or remove him to prison ac-
 cording to the circumstances of his commitment
 upon. & the cause in which the person was com-

a writ of habeas corpus and the court, upon
 being so informed, shall issue the writ. The
 object of the writ is to prevent illegal imprison-
 ment, and also to prevent an illegal return
 upon the imprisonment when the commitment
 was illegal. — In obedience to the writ of ha-
 beas corpus is, perhaps, the most common re-
 sponse to any other prerogative writ. If an objection
 is made to the writ the court will
 immediately grant an attachment.

Prohibition

This is a writ issuing from some court directly
 to the judge, presiding in one of the
 an inferior court commanding them not
 to proceed in a certain cause, because some
 rule has been broken.

This writ is granted at the request of the party
 aggrieved in the inferior court, and a suggestion that
 the court below has acted in violation of the writ.
 There is no attempt to be made. The party applying
 for the prohibition must produce a copy of the
 proceedings in the court below, and the suggestion
 must be added with a sworn affidavit of its truth. It
 is a common reason why the court ought not to
 proceed. If the facts stated in the suggestion are
 not taken to be the matter of the jurisdiction of
 the court below, a writ of prohibition issues. This

Q.

Evidence

It is a primary rule of evidence that the best evidence should be produced, therefore if a will admitted must be produced (ie) the best evidence existing and in the absence of the best, others to prove any fact must be advanced. Therefore where a contract is written, parole testimony cannot be admitted to prove such contract unless it is shown that the writing is lost. Subscribing witnesses are required to a deed and the nothing except the creation of the deed is required to be proved - bystanding witnesses can never be admitted to testify to such execution unless the subscribing witnesses are dead or out of the jurisdiction of the court because the subscribing witnesses are considered the best evidence. In England the jurisdiction of the court for this purpose is simply the realm of England. Scotland would be considered out of the jurisdiction. In the United States the general rule has been to consider each state as a limited jurisdiction respecting such witnesses. Were it shown upon a trial here that a witness was in Philadelphia beyond question he would be considered as out of the jurisdiction but were he only over the line of the state of New York

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I do not ~~know~~ know, also whether it might not
be held necessary to produce them. It is not to be
understood that all possible evidence must be
produced. But only sufficient evidence to establish
his guilt is all that is required. One good
witness is sufficient evidence of the commission
of a deed and tho there are more subscribers
witnesses to a deed it is not necessary to produce
them. Another general rule is that the party
who takes the affirmative of a proposition must
prove it. It is an exception to this rule that in
a person is accused of not doing any act which
the law obliges him to do the person making
the charge is obliged to prove it notwithstanding
it is the negative part of the proposition. The
reason of the rule is that a negative is hard to
capable of a positive proof and the reason of
the exception is that it is presumed every person
does that which the law enjoins until the con-
trary be proved. In all cases the facts which con-
stitute a charge are to be proved and the char-
acter of the parties concerned. as if a person is
charged with having committed an assault
and battery the facts must be proved and the
Plaintiff will not be admitted to show that the
defendant is a person apt to fight. It is true that
the character of a person charged with having

committed an illegal act might have influence in determining the belief of a jury respecting the truth of the charge. But should be a dangerous practice to go into an enquiry about it. There are cases where an enquiry is admitted respecting the character of persons concerned, but this does not properly form an exception to the general rule because the character in such cases is really put in issue. Such action for having had criminal conversation with another's wife - the previous character of the wife is the criterion by which the amount of damages is determined. Much of the criminality of the act in such cases consists in the defendant having alienated the affections of the wife from her husband. Therefore if it can be shown that the previous conduct of the wife demonstrated an absence of regard and affection for her husband the criminality is greatly diminished. Some modern cases have seemed to admit & perhaps with propriety that if the criminal conversation was had with the prior consent and connivance of the husband no recovery can be had. If a man give a bond to a woman upon consideration of her living with him some time past the bond is valid unless it appears that the woman was not chaste before he seduced her

A bond of this kind is what chancery writers
 have termed *presumption iudicialis*. as the weight of
 it depends on the persons character; therefore
 the defendant may go into an imputation of par-
 ticular facts from which the inference of pre-
 sumption is made. Evidence not received
 to the issue joined is always rejected. If to an is-
 sue upon a rule of law the defendant is to
 plead full payment and then offer to prove evi-
 dence that the debt took place before the death
 of the testator the rule is not to be applied and is
 admitted because it is irrelevant to the issue which
 was the subject of the plea. It is also admitted
 as an exception with qualification. It is a general rule
 that hearsay evidence is not admissible. A witness
 must testify to his own knowledge. He is not to tell
 what others have told him, and the person who
 told him the fact is absent or dead. If he
 were not, it might be. The reason of this
 rule is obvious. For when one swears to what a
 person told him there is no oath & consequently the words
 of the person speaking are out of court. Where this
 reason upon which the rule is founded fails the
 rule itself fails & hence one may testify to what
 another ^{has} sworn in court. The necessity. The necessity
 of admitting hearsay evidence in order to dis-
 cover facts has introduced some relaxation of

the above general rule. Hence some things
are said & admitted to prove an general repu-
tation - of this kind are marriage and pedigree
or where there is an inquiry whether a man is
descent from the jurisdiction of the court what
his family were and about it - or what one said
who saw him at a distance - may be given in
evidence. After the death of Parents declara-
tions made by them in their life time as to the
time of their marriage or the time of the birth
of their children may be given in evidence by
those who heard the declarations. But evidence
of a sort of accept of the husband at the proper
time in order to bastardize the children would
not be admitted even by the parents themselves
for such evidence is against decency. What
people have said especially old people have been
heard to say during their lifetime respecting the
bonnet and is always admissible evidence.
If a party has been heard to say any thing which
operates against himself it is always admitted
as the best evidence against himself. Also if
any thing has been said in presence of a party
of a nature which if false he would be im-
posed upon to contradict - such declarations
and the parties acquiescence are sometimes
considered as evidence of some weight against them.

But the a man's own declarations may be taken
 as evidence against himself the declaration
 cannot be so. There is indeed one case when
 the declaration of the wife that she associated
 with a man for the purpose of a child was
 allowed to be given in evidence against the hus-
 band - and the reason given is that this was
 respecting business with which the wife is co-
 mmonly conversant. But says the Judge it does
 not seem that the real reason why the decla-
 ration of the wife was not given in evidence
 against the husband is because she is not de-
 scribed to be acquainted with his business
 but it is to prevent the disturbance which
 might be occasioned to domestic tranquility
 What a person has offered to compromise a
 matter can never be taken against him
 as evidence of a debt. A man may perhaps
 choose to give something by way of compromise
 in the matter in dispute, but that can be
 used the contrary he does not acknowledge
 anything to be due. It however once appears
 that he has had certain articles of another
 for which he will give a certain sum - though
 so much as the other demands - this as far as
 it goes may be taken as evidence against the
 party because it is an acknowledgment

of the real existence of the debt. What one has freely confessed in an examination before a justice of peace is good evidence against him. But confessions obtained by threats or promises is not admissible evidence. But it is said that if by threats or promises one is induced to confess that he has stolen goods and has deposited them in a certain place and the goods are found deposited in the place described then may it be given in evidence and will have considerable weight in establishing the fact of stealing.

A competent witness is one that may be admitted to testify whatever degree of credit may be given to his testimony.

A credible witness is one whose testimony is considered of as much weight as that of people in general. It seems hard necessary to observe that persons destitute of discretion as Idiots Lunatics & infants cannot be admitted to testify in a court of justice. There is now no particular age fixed which determines the competency of a child to be a witness. At fourteen years a child cannot be rejected on account of his age and they are often admitted to be younger. But they have several times been excluded at seven years. It has of late been the

practice (and) say it to be wise & think it a
 reasonable practice for the court when a
 child is offered as a witness to examine it
 and its discretion its understanding or right
 and wrong and of the situation of an oath
 and to admit or reject it according to its ap-
 parent discretion. Persons deaf and dumb
 have been admitted to testify. There are two
 degrees of infancy affecting witnesses one
 less influence on their credibility - the other
 excludes them from testifying. The infamy
 which only less influence on their credibility
 of a witness is a general want of reputation
 which diminishes the weight of the testimony
 in proportion to the baseness of the character.
 In this state and I expect in most of the U.S.
 says the jury - when we would inquire the
 character of a witness we call upon the jur-
 ors and enquire what is the general char-
 acter of such a witness as to truth and veracity
 by which we mean - what is his general re-
 putation in the opinion and report of the community.
 In answer to such question the witness is al-
 lowed only to tell what the general character
 of the witness is. & should he undertake to tell
 any particular facts to show the want of integri-
 ty in the witness he would be checked.

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It is easy to see that in many cases this violence
mode of discovering what degree of credibility
ought to be attached to the testimony of a witness
is defective. Tho the witness which is attempted
to be impeached may possess a tolerably good
character in the opinion of mankind. yet the
witness who is examined respecting it may know
that he has been guilty of conduct which of known
would impair his credibility. The English race
a mode of supplying this defect from which we
have entirely deviated. They not only inquire re-
specting the general character of the witness as
we do but they go farther. They may ask the wit-
ness whether ~~whether~~ he himself would believe
what the witness should say when they attempt
to impeach - and to this he may answer as he
please. If he answers that he should not give cre-
dit to what he said - the party impeaching may
not ask why he would not believe him. But
the party who wants the testimony of the impeach-
ed witness may if he pleases ask the witness
impeaching why he would not believe the witness
impeached - and he may then tell. This mode
seems well adapted to discover the character of the
witnesses and says the judges know not why we
have deviated from it unless it is because we did
not understand the English rule. And tell that;

since we have reported cases of John Prier we
 have not understood all the English rules
 of evidence. We have varied from our own
 general rule in one instance viz we have al-
 lowed to inquire whether the witness belonged to
 a brother. This was done from necessity for
 in the County of Fairfield parties had a habit
 of sending to each other to obtain depositions
 & proving what they pleased. When a witness has
 been heard to tell a different story out of court
 from that which he testified in court other wit-
 nesses may be called upon to testify as to the matter.
 What he has told out of court will not be taken
 for truth but it will detract from the credit of
 his testimony. A party shall not impeach his
 own witness. This rule is founded in good policy
 for it may tempt a witness to come from the
 truth were he liable to be impeached for testifying
 differently from what the party calling him
 expected. A party may not attempt to im-
 peach his own witness directly, but he may attack
 call on other witnesses who can testify otherwise.
 A person who has been convicted of a crime such
 as Forgery - or perjury though an infamous crime
 which has a direct influence upon his integrity
 is excluded from being a witness in any case
 a reason is mentioned by elementary writers

as a species of crimen testis. But we may ¹⁰⁷ Evidence
conceive that in some times, a man
may be guilty of treason and yet it shall be no
injury to the credibility of his testimony. When
one would destroy the competency of a witness
showing that he has been convicted of an infor-
mous crime he must produce the record be-
cause it is the best evidence. This may some-
times occasion difficulty - for if a party knows
that a witness has been guilty of some infamous
crime and does not the record to show it he
cannot prevent his testifying and he can have
no remedy unless perhaps he may make it
a cause for a new trial. The infamous punish-
ment which follows a crime was formerly con- sidered
evidence as the reason for excluding the sub-
ject of it from being a witness but it is now set aside
and to be the nature of the crime which affects
the integrity of the person and destroys his com- petency
as a witness. It seems now to be admitted 689
that a witness when offered may be asked
whether he has not been convicted of a crime
and if he confesses he has this is the same proof
as the record of the conviction would be. This
rule is not liable to the objection that the witness
is asked a question the answer to which would
criminalize himself for if he confesses he has been

convicted of a crime it is an acknowledgment
 of what is known - nor can it subject him to a
 new trial. It is similar in this respect to the
 case of a woman who has a bastard child and
 is obliged to acknowledge the father - the object of
 compelling her to do so is to prevent the father from
 being bound to pay the costs from any ex-
 pense accruing from the maintenance of the
 child. It was decided that she should discover
 the father. The court however was divided and
 says the judge has refused to the compelling
 her to make the discovery - it is on the ground of
 her exposing the fact as it respects her credit for
 her infancy and exposure to a fine was actually
 known - but I suppose it better to have the law
 & the trifling expense which may be occasioned
 & destroy the peace of a family were the father
 found to be a married man. According to the
 1849 Eng. rule the pardon of a person who has
 been convicted of a crime restores him to his
 original credit and renders him capable of
 being a witness from this rule are excepted
 those cases in which the incapacity to be a wit-
 ness and the infamy is a part of the punishment
 of this kind is a conviction of perjury. There
 seems to be some absurdity in making a par-
 don restore the credit of a person who has been

convicted of an infamous crime. & pardon & clemency
never proceed upon the idea that the subject
was not guilty. & that the judgment of the
court was not correct. For in such cases the
unit of error is the proper remedy. But a par-
don always proceeds from the exercise of mere dis-
cretion in the supreme power. I have not seen the
statute however the above system has been adopted in
the United States. It is said that many years
ago it was admitted in one case in this State.

A man may have been convicted of a crime & yet
by his subsequent conduct restore himself & credit.

Several years ago my father & I were a lad in that State
eighteen years old being an ingenious mechanic
was induced to assist in making plates for the pur-
pose of forging coin. He was detected convicted &
had his ear cropped. From that time he became
upright industrious and of respectable character.
After he became an old man he was called to
testify in court - and objection being made on the
ground of his having been convicted of forgery the
court held that the reason why a person who has
been convicted of a crime may not testify proceeds
from a presumption that a person committing
such a crime has not a regard for truth. But that
in this case the subsequent conduct of the person
overrode that presumption, and therefore admitted him

to testify. This is a doctrine since been followed in other
 cases. In England where we is admitted, a person
 admitted to the benefit of the clergy, & turned on the
 ground - the other said is a double pardon therefore
 it is the subject is admitted to testify. It is the same if
 the punishment of hanging, in the hand is remitted
 by a pardon. & perhaps, criminals are who
 confess, & are admitted to being concerned in the
 perpetration of a crime of which others are accused
 is in practice admitted to testify against them be-
 ing himself usually pardoned. The testimony of such
 a person is always free admitted and is a source
 of great utility to courts of justice.
 Such an accommodation is in England frequently found
 in evidence - & here States evidence

Having an interest the observability is not on
 the non-credibility of a witness on account of his
 character. The next step of cases is where one is
 excluded on account of corrupt principles. At Com-
 Law (and such is the law at present) all persons
 professing of treason were always excluded. The ground
 or principle of exclusion is easily seen. Unless the
 witness is under the sanction or feels the influence
 of a court - it is idle and misapplied to suppose
 to the truth of any fact - because he is not supposed to
 believe any evil consequences will follow from a wil-
 ful misstatement of facts. He is supposed to be under

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no greater obligation to tell the truth Violence
than before. There are indeed some authorities
as that an oath makes no additional obligation
and in effect it is of no consequence whether they
are under an oath or not - but the law is a
possible draw the line of distinction by whom
the solemnities of an oath confers an additional
obligation to tell the truth there no objection is
to be made on account of corrupt principles, and
vice versa where no additional obligation is made
by an oath there the witness is to be excluded.
The rule of the common law, formerly extended
much farther in excluding witnesses than at pre-
sent - The Com. Law has changed not by force
of any statute but the influence of common sense
formerly and a late accident were no Englishmen
admitted as such. By English the meaning there
did not belong to any Christian nations - as Mus-
chamans, &c. There was no objection
as to excluding a witness because he did not ac-
tually believe in the Christian religion. But they
always considered those to be Christians who were
educated in Christian countries. In the law now
all nations languages & tongues are admitted to testify
- the character by the ^{own} birth - the gentes &c. can
be his share & the Christian by the Bible - those
all feel the solemnity of an oath according to their views.

[illegible]

115
omitted. And many persons in administered
rather to supply these words where they
are wanting. There are two classes of persons
upon whom an oath cannot be supposed. One
influence viz. honest, bright persons and non-
conscience impugners persons - but upon the latter
class it is undoubtedly an oath has an in-
evitable effect.

Decommunicated persons are said to excom-
municate to be excluded from testimony. Now
this seems to say so much the same as incommunicate.
I have found no authority in the books for such
a rule - Perhaps it is, they have an idea that placing
a man thus a witness even to the accused and that they
become a citizen of the Kingdom, is unfit, for a
witness. I think, for we have nothing to do with
any law of the kind & say the same I suspect it
is not necessary to say so. The oath of per-
jury which were solemnly executed are now
the honour and credit of our own country admit-
ted to testify in all cases upon an affirmation
without an oath. There are Quakers who were
originally excluded because they were not
taken an oath. In 1791 a statute made a law - 11
is the testimony of Quakers to be given in civil cases
in the same manner as in criminal cases. This measure was
considered civil - upon solemn affirmation. But in 1801

criminal case. Lawyers are not to be allowed
 to testify. This is an excellent & real re-
 medy for the evil of the English law - and great
 injustice may often be done in consequence of it.
 In the United States are allowed to testify upon
 affirmation both in civil & criminal cases - in some
 of the States to practice the profession is considered
 in certain respects as making the Statute effect.

The next class of cases is where the witness is ex-
 cluded by reason of interest in the action. All per-
 sons interested in the result of a suit are excluded
 from being witnesses. The interest in order to exclude
 one from testifying need not be direct - but con-
 sequential interest will also exclude. An interest
 here is meant pecuniary interest & not interest
 of the feelings - for the latter are to be considered
 & of the competence of a witness. Suppose one
 man sues another & says title becomes lost for
 the Defendant - Johnson he cannot be a witness for
 tho he is not directly interested in the event yet
 in case of a recovery against the Defendant the
 judgment lays a foundation for an action against
 him. So as in cases of warranties in Scotland
 if Tom sues one of the warrantors the war-
 rantor shall not be admitted to testify because
 the warrantee in case he is defeated may have
 right of action against the warrantor - i.e. Warrantee

And I repeat of the other that a ^{2d} Evidence
foundation for an action against the executor
this may be said to be in a general sense that
no one can be a witness in any case where the
judgment may be a foundation for an action. It may
be a witness or be made use of in evidence as
against ~~any~~ ^{any} man. The witness may never be of any
interest either directly or conversely. In the 2nd 55
event of a suit that it has been said in ~~English~~ 3rd 2nd
in the case of Bent & Baker that an interest in the 2nd
matter does not render a witness incompetent but that
one only to his credibility. ~~Section~~ It is not so
strict that the it was not so applied to
the case than before the act. It is difficult to
decide all the cases on this point - but so
one wishes to have ~~the~~ ^{the} interest in a witness
except - as interest does & to another & to
L the rest - the only intent - the concernment
& of blood, the representation as if the witness
had heard of his wife before the death in marriage
was taken out can be called in as a witness
It is not interested in the event neither directly
nor conversely - the verdict can never be
given in evidence in an action against him
nor does the judgment lay a foundation for an
~~action~~ ^{action} against him for the the witness will
make false representations if the witness is interested

yet he may not have told the same - or he
 may have told the truth & to the witnesses
 of course the verdict cannot be given in his favor.
 Therefore he may always in such a case be ad-
 mitted to testify - tho he may have a very strong
 bias in favor of the plaintiff & decide & decide
 that he himself has not seen an action per-
 forming as it is made - happen in another
 case between another of or & false between mo-
 re & so both on various contracts - & false
 upon & a new time to be made sure & in relation
 to a witness - the & the other & feelings in fa-
 vor of each he will be a limited and witness
 all that the best of evidence in civil cases is ad-
 missible in conformity to the rule laid down by
 Lord Mansfield in the case of Bent & Baker - viz that
 an interest in the question goes only to the credi-
 bility and not to the competency. This rule applies
 to all cases except prosecutions & ~~private actions~~
 for usury, forgery & perjury. I never could see
 says the judge wherein the difference as to the
 admissibility of evidence consisted between
 civil actions and public prosecutions. There
 seems say he to be no reason why if you ad-
 mit them in ^{the} one case you may not in the other
 But says the judge I will hazard no conjecture
 as to how this difference first arose. I draw

11,
this conjecture says he from an examination of the
of the Chancellor and the Court in an usage of
this Court is to cancel the obligation & if whenever an
obligation sued upon is found to be forged then
it is immediately cancelled by the Clerk. Sup-
pose it owes to 10[£] & gives him note for this sum to 40
affixes another signature to the 10[£] by which it is in- 100
creased to 100[£] - Here if he is prosecuted for this 40
forgery by the public officer it shall not be a wit- 100
ness - Suppose further a prosecution 100
is commenced against some clerks for forging a 75
note against John Hides - the money being paid up.
John Hides has no interest in the event of this suit
because the penalty goes to the public - but he has
an interest in the question for he may in case the
forgery is made out bring an action for money
had & received & recover back the money paid un-
der this forged instrument - It will be seen that
that the judgment in the prosecution could not
be given in evidence on this trial because it is
a general rule that no judgment in a public 100
prosecution can be given in evidence in a civil 100
action. but *quæstio* is there not a foundation in this civil action 100
laid by the judgment in the prosecution in the *exemplum*. The same 100
is the case where one is injured by another who 75
joins himself - and third person who shall pro- 60
secute him will be convicted of perjury is entitled to 10[£] penalty

The person injured cannot be admitted to testify
 in this case. Suppose one was prosecuted for
 taking a vicious interest of ex- the various obli-
 gation being paid up & cancelled - here it is entered
 in the action because by the modern rule he can
 recover back the same interest which he had
 paid. But because the instrument is cancelled
 13th we can not be admitted to testify. and ex-man
 14th who is trustee for another may or may not be ex-
 15th pence in an action for or against the same under
 16th the same account as a witness interested or not in the
 17th issue of the suit - as if a ward brings an action in
 18th the name of his guardian - & the guardian is called
 19th the action fails & is deemed nullified by the ward then
 20th the guardian may testify in that action. But in
 21st cases where the court have an oversight of the con-
 duct of the guardian and in case of a foreign-
 22nd ward suit brought in where the court will not al-
 low the suit out of the state - the ward there-
 fore the guardian is called an ex parte ex-cedat
 from testimony - so in all cases where one of the par-
 ties in the action is merely a nominal party as
 where a father brings an action in behalf of his son
 he may be admitted to testify. Members of a cor-
 poration are witnesses when not interested im-
 mediately in the suit as if in a parish or town
 which for that purpose are considered corporations

any dispute arises with regard to real evidence
or taxes - there were are not suitable as to themselves
doubtless be very wrong. It is said that other persons
who are reliable are admissible from the small share
out of the interest they have in the event - but that
as there can be with propriety no inquiring how
much one is interested it seems to be a very safe
thing from just principles of law to allow one
to testify who is in the least interested. In this
state we act with members of corporations - pa-
rish towns &c to testify in actions in which
they are interested - but only in case of necessity
as where no other persons were present at
or have no knowledge of the transaction in dis-
pute - It has been decided in one case that he
who carried on the suit for the corporation may
be admitted to testify. To the rule that no one
may be a witness in any action in which he has
an interest in the event there are some exceptions
if consequential interest is different and distinct
from an interest in the question the ~~they are~~ ^{they are} ~~then~~
confounded - where a person can gain or lose
by the judgment - as by its laying the foundation
of an action in his favour or against him - or if
the ~~action~~ judgment may be given in evidence
in another trial arising out of the same subject
it is an interest in the event. but any influence

or bias one man naturally be supposed to
 have on his mind on account of any interest
 he has connected with the subject of the trial is
 only an interest in the question and will not
 excite him. Suppose B owes A & C gives a
 bond to A for this debt for which B is to indemnify
 C — C commences an action upon this
 bond — B cannot be a witness — because after
 a recovery against C — this judgment may be
 given in evidence & will constitute the rule of
 damages in an action by C against B on the
 the promise of indemnification. The grounds of the
 exceptions in the necessity of the case. It is a gen-
 eral rule that where a statute is made which precludes
 216 a man from having operation unless a person
 interested under it is admitted as a witness he
 must be admitted. In Eng. every person robbed
 may by force of a statute have an action against
 the Sheriff for indemnification — unless by hue
 & cry they pursue and take the Robber — (and
 without this statute a man could hardly live
 formerly free from robbery) — In this suit the
 man robbed is admitted to testify as to the fact
 217 of being robbed and the quantity of money lost.
 The statute were it not for this would be negative
 there being no mode to prove the quantity of money
 taken — or the fact of being robbed. Then are

say the judge some Statutes in the 1st. Evidence
inflicting penalties and in other respects bearing
great analogy to the Statute of Wilton concerning
robbery. But it was decided by Justice Jay that we
could not in these cases go so far as they did in
England - & I am inclined to think this was a cor-
rect decision. Where one instigated a public
prosecution against another charging him
with theft - in action against this false accuser failed
in order to make out the malice the wife was
admitted to testify that no goods were stolen.

In Len. an action of theft is given in the na-
ture of a civil action in which terrible dam-
ages are recoverable - the Plaintiff in such action
may be admitted to make oath that the goods were
actually stolen. In Massachusetts they go further
and allow the Plaintiff to state the circumstances
as that he caught the Defendant in the act. We have
a Stat. also allowing the P^l in case of a secret assault
to testify to the fact of his having been assaulted - The
assault must be in the night and when no one was
by - otherwise the P^ls will not be admitted. It has
once happened says the judge in this State where one
brought an action of secret assault against another
The defendant on trial proved that a third person
was present being under the fence & saw the whole
transaction - The Plaintiff in his replication said

that this third person was not creditable on account of his former life and on that it was so found - and the action was sustained. What is remarkable in the case - is that this third person from this day turned right about from his former conduct and became an upright respectable man. This replication was before the court & jury was a dreadful thing - it ^{was} severely cutting & had the desired effect. In both civil & criminal cases an attorney is allowed to testify under oath with regard to matters in dispute which are supposed to be known only to the parties themselves. As in cases of criminal attachment the one who is factored may testify that he owes the defendant or looks nothing as if he owes it - & conversely - if recovered in an action against B - leaves a copy of the execution or attachment with B - then takes out a writ of habeas corpus against C - here neither side facias C may not only testify whether he owes B or not but he is obliged to say how much he owes B. As to the law of Chancery on this subject the Plaintiff has a right to rest upon the conscience of the Defendant and in this appeal to the conscience of the Defendant he is obliged to answer interrogatories as are ordered. Or if he refuses to testify the court instead of putting him in prison for contempt or inflicting a penalty upon him grant him a subpoena duces tecum.

In the same manner the defendant Evidence may appear to the conscience of the Court. If the fact is supposed to be within his personal knowledge - and in case of false representation by either party they are liable to all the pains and penalties of perjury. In this state the parties in testifying in the manner above mentioned are not usually put under oath - tho' they may be sworn be, provided it is desired by the other party. There have been cases where necessity arising from the part of the Def^t have been joined in the action to prevent them from testifying. But the rule of law as now established renders this of no avail. For upon motion to the court any one of the 154 Def^s if no evidence or ground of action appears against him may be tried first - & the court in case this be found true will order his name to be struck out and admit him to testify. So if more than one more Def^s in an action - as against a party Def^t makes default as omitted to plead - here he may be made admissible to testify tho' he were right & a right answer. So if in an indictment one or two or more Def^s will submit to be fined he becomes admissible to testify. The parties in an action of account are admissible to testify before a jury - this also arises out of the necessity of the case - & once put the parties can be supposed to know of a fact

charged in the place and since in that &c.

The next set of cases under the exception is con-
cerning agents. Suppose one instructs another
to carry money to a certain person & deliver it to such

125 person. - the money is paid but no receipt was
130 given and no indorsement on the obligation.

135 The agent who carried the money shall be admitted
140 to testify to the payment - tho' so certain as it
145 shall not be proved on oath the money is not paid so
150 certain the agent or carrier becomes liable to the
155 holder or the one delivered the money to him. so that
160 he is in fact consequently interested

In cases of rewards offered for apprehending a
thief - any one induced by this to seize and con-
fine him in jail may be a witness to prove
that he stole goods - In this case it will be seen that
he may be directly interested in the event - as if
the condition of the reward were not only to ap-
prehend him but to bring him to condign punishment.
to test-seasons suppose B & D meet with C on the
street and abuse him unconsciously - C may
one day take D for a witness - If D can not sw-
ear it when B & D then he will not clear off himself
But if this action fails then D is as liable as ever
therefore D will say within himself I'll never want
to enough to convict them - ~~standing~~ standing all this he may
be introduced to testify

In *inducement* *in* *against* *the* *members* *of* *the* *company* *is* *not* *admission* *bridges* - *the* *members* *of* *the* *company* *of* *the* *interest* *may* *be* *witnesses* *because* *it* *is* *alleged* *their* *interest* *is* *permanently* *It* *is* *says* *the* *judge* *a* *little* *difficult* *to* *get* *along* *with* *this* *open* *principle* - *The* *quantity* *of* *interest* *cannot* *be* *inquired* *into* - *I* *see* *no* *objection* *say* *he* *to* *the* *admission* *those* *who* *pay* *nothing* *and* *there* *are* *many* *such* - *The* *method* *which* *some* *have* *taken* *to* *deal* *with* *this* *is* *really* *a* *curious* *in* *951* *vention* - *In* *order* *to* *prove* *that* *the* *share* *in* *effect* *will* *no* *interest* *it* *is* *alleged* *that* *the* *case* *the* *benefit* *129* *and* *gratification* *of* *riding* *over* *a* *good* *bridge* *will* *be* *in* *countervailing* *the* *expenses* *of* *repairs* *to* *which* *they* *307* *may* *be* *subjected* - - - *If* *A* *promises* *to* *lease* *land* *to* *B* *provided* *it* *can* *be* *put* *into* *his* *possession* *by* *any* *act* *or* *agreement* *B* *will* *be* *excluded* *from* *testifying* - *I* *now* *say* *the* *judge* *If* *A* *had* *promised* *to* *lease* *the* *land* *to* *B* *for* *half* *what* *it* *was* *worth* *then* *he* *ought* *to* *be* *excluded* *but* *here* *no* *interest* *is* *certainly* *attached* *to* *B* - *Comp* *however* *says* *the* *judge* *I* *presume* *the* *benefit* *381* *have* *been* *otherwise* *were* *it* *not* *founded* *in* *policy* - *and* *21* *Suppose* *at* *once* *B* *C* *&* *D* *more* *than* *he* *is* *able* *to* *pay* - *In* *an* *action* *by* *or* *against* *joint* *debtors* *for* *a* *debt* - *the* *creditors* *B* *C* *&* *D* *may* *testify* - *the* *in* *case* *the* *action* *fails* *to* *B* *C* *&* *D* *may* *lose* *their* *debt* *versus* *A* -

In this case there may be strong or strong bias in favour of a recovery by the Plaintiff as in the other — The rule in the former case was undoubtedly founded in policy — It would lay a man down for a great deal of trouble were the one who had the promise of a lease admitted to testify — since the stat. of frauds & perjuries however which make a parole lease void there is not so much chance for fraudulent practices — but yet upon examining a witness upon a voir dire (ie) as to his interest in the suit — ~~as~~ he may be excluded when he has no legal interest but only one founded in honour & good faith — as in the above case of a parole lease suppose he be examined upon a voir dire thus — do you believe that the D^y will execute his promise tho he is under no legal obligation to grant you the lease — I don't know says the witness. But do you think that he is so far bound in honour and good faith as to grant you this lease — Yes — this will exclude him. A man cannot so become interested by his own act after the transaction ~~concluded~~ the suit is brought — as to be excluded from testifying — as if he should say I can't testify because I am interested — when did you become interested says the counsel after the time of the transaction concerning which the testimony related — this will not exclude him.

It is of one day's argument that one of the parties will not set his case — if he set a case what this don't deprive him ^{of the testimony}

12
all pecuniary interest in any suit may be released - a release thus given removes all interest and the party may be admitted to testify - If a release is not accepted when offered - a release may be tendered in court & will be equally effectual.

As to witnesses to written instruments as devised by Stat 29 Car. II three credible witnesses are required to subscribe a devise of lands in the presence - or possible view of the testator to make it valid. This has occasioned a great question in England whether the witnesses must be credible at the time of the attestation or ^{only} at the time of the probate of the will - Or whether the non-credibility at the time of the attestation - can be removed by any subsequent act of his - as by releasing a legacy to which he was entitled under the will. It was decided by Chief Justice Lee & the three puisne judges who sat with him that a legatee who had released his legacy could not be a competent witness. Afterwards a statute was enacted 1752 making all legatees to subscribing wills competent witnesses. Subsequently to this in the time of Lord Mansfield whose argument on this subject is the most elaborate and refined argument to be found in the whole of our system of law - it was decided by his Lordship & four other of the judges - that legatees after release were competent

It was ~~decided~~^{ruled} afterwards in the court of com-
 mon Pleas by Lord Camden who differed from the other
 three judges & whose argument contains much
 ingenuity - that legacies tho in stat. the legacies
 were void yet were not competent witnesses. &
 that this question remains yet undecided in Eng.
 Day. there being ~~three~~ judges upon one side & several
 on the other. The superior court in Connecticut deci-
 ded with Lord Mansfield - that the legatee hav-
 ing released his legacy was a competent witness
 this decision was reversed by the court of error.
 & the question yet lies open for discussion in this
 state. I view this question says the judge in a li-
 ght somewhat different from that in which it
 has ever been considered. I am of opinion says he
 that a subscribing witness to a will in which he
 is a legatee may by releasing his legacy become
 a competent witness to prove the validity of the
 testator and the due execution of the will. I do
 not think says he the Legislature contemplated
 the introduction of any new principle. And before
 the Statute of Charles which only prescribes the
 forms of making and attesting a will legatees
 after having released all their interest in the
 will might be admitted to testify. A rule of evi-
 dence is more general than that the objection to the
 competency of a witness may be removed by his

releasing his interest. The ground on which evidence
 I place this question upon the judge - is that the
 subscribing witnesses, named as witnesses in the
 will are not at the time of attestation interested
 in that legal sense which excludes a witness. They
 have no real interest - the interest is not vested
 it is future and contingent. admitting the wit-
 nesses to be competent or non-credible at the time
 of attestation. True surely & should agree with Lee
 & Lambson that the non-credibility could not be
 proved - it is an infant or lunatic attesting a
 will can never be competent to testify upon pro-
 bate of the will tho his age and reason be re-
 stored. But says the judge & considers the witness
 not to be interested till the death of the testator - & then
 then & not until then what he is to receive from the
 will vests in him - (ie) the right to it rests in him) But
 and he has a substantial interest - which may
 as well be released as any other. The future pos-
 sibility of an interest which a legatee has at the
 time of the attestation of the will may be sup-
 posed to bias his mind. But mere bias without
 any interest to release it is nothing - the law
 does not regard it even as going to the compe-
 tency of a witness - a father has a bias for his son
 or son for his father - yet each one is admitted to
 testify for or against the other. by the reasoning of

Lord Camden says, Judge never I don't see why
 an Uncle - or a nephew - a father or son - ought
 not upon the same ground be excluded, from tes-
 tifying in each other's cause. Husband & wife
 are never excluded, from testifying against each
 other on the ground of affection - or mere bias
 but it is on the ground of policy as will be men-
 tioned by & you. The heir at law against whom
 the will operates - the father of a son to whom
 a third person leaves a legacy - both have strong
 biases - but have never been considered other-
 wise than competent witnesses to a will. suppose
 it brings ejectment against to - to claim title
 it is a man afflicted with some disorder, from
 which there is no probability of recovery - he has
 but one son to whom in case of his death all his
 estate would descend (there being no debt due)
 it has a deed to which his son is a subscribing
 witness - no doubt but that this son may be ad-
 mitted to testify to the validity of the deed. —

The words of a dying man (in articulo mortis
 as it is called) may be given in evidence which
 makes an other exception to the rule that hearsay
 evidence can never be admitted - It is the im-
 mediate contemplation of the imminent
 death which gives efficacy to these words - But
 if the person does not die then ^{imminent} they cannot be

To the general rule that all interest *indifference*
 can be released - this is one exception in my
 book of conveyances and this under covenant of warranty
 B to C - & C to D & C to E & C to F in the present. I want
 to introduce it as a ~~new~~ ^{new} ~~not~~ ^{has} ~~not~~ ^{been} ~~not~~ ^{be}
 fore observed they are interested - Suppose I
 say I will release you & from all liability what
 ever be the event of the suit - & suppose I say
 he will release all manner of interest in the suit
 and all this committed to writing - One would
 suppose at first that C is indifferent - & not in-
 terested at all - but this went do - he cannot be *et hoc*.
 admitted - When C warranted the land he
 warranted it to all mankind to whom the land
 should come & not solely to B - & tho I has released
 him from liability yet he is liable to all who hold
 the land by virtue of any title subsequently to his
 own - therefore in ordinary cases a warrantee
 cannot release his interest in the land and *ce*
fortiori in the suit. Where the case the law
 ceases also therefore if there be no covenant of war-
 ranty the interest can be released - or rather there
 will be none originally. This is the case with those
 who give quit claim deeds. they may be ad-
 mitted to testify - But says the judge I should
 suppose that since the introduction of the rule
 that where the land sold turns out to be more

more or less - or not at all the same
 may be recovered by the plaintiff in several
 and received - I do not say however that in this
 case the defendant's answer would not be a com-
 petent witness. - What is the meaning of the words more
or less indeed is for the purpose of law. and is one of the
 students in the office. It means say the law is within
 it is generally used (a) that is it has no effect in constraining
 the deed. - In cases of joint & several contracts
 a note of hand is given by two or more persons
 jointly & severally - if one only be sued the other
 8th. or cannot be a witness because a recovery in this
 9th. action may be pleaded in bar to one commenced
 10th. in the same person against himself therefore he
 11th. will be interested in favour of a recovery against
 12th. his co-obligor - but again may not the obligor maintain an
 13th. action against him for his quota - if so what has the difference can
 it make witness. - Suppose the Sheriff is sued
 for an escape - The prisoner escaping may be in-
 duced to prove it to have been a voluntary es-
 cape. - So he by swearing the debt upon the Sher-
 14th. iff discharge himself - but if the escape was
 15th. negligent the Sheriff might have himself met-
 16th. sued over against the prisoner. The same is the case
 17th. where he is rescued - he may be admitted to tes-
 tify in an action against the rescuers. -
 The next set of cases are those where one is excluded

from testifying on the ground of relationship & violence
The principle of exclusion in this case is entirely
different and distinct from bias. It is principally
to preserve domestic tranquillity - On this account
it is that the husband can never be admitted
to testify for or against the wife nor the wife for
or against the husband. Suppose an action be
commenced by A against B - The wife of B is
wanted to testify well says the judge it is willing
B is willing & wife is willing and they are all
willing - but the court will not suffer her to testify. 286
for tho she tells the truth she may put a stop
upon it & smooth it over - & for all this tho her
husband suffered her to testify & tho he don't cry Her Du-
ty to her put he shows unfavourable looks sometimes 287
it is not standing this either of the parties may
admit the other to testify - either party may not
so be admitted to testify against himself & this
in ordinary cases is the strongest and best evidence.

It is said that in an accusation against a man
for treason his wife may be admitted to testify
against him. It is doubtful whether this is true
I have seen no authority to the point except the books
& am of opinion that it ought not to be received as law.
The wife may be admitted to testify upon a public
prosecution for personal violence done to a child
but not in an action brought by herself before the

case of Lord ^{Windsor} which is indeed a disgrace &
 that is ^{the} the law — the law was in this case kept from
 its due course. It is now settled and the court ad-
 mit without doubt that the wife upon a public
 prosecution for being driven out of bed — or beaten
 or any other violence done to her may testify
 against the husband. The character of the wife in
 such cases is in very little danger of being im-
 peded — nor in such case is domestic tranquillity like-
 ly to be prejudiced. The principle of securing
 the peace against one extends equally to the husband
 & wife and forms another exception to the rule.
 There is in the books a case of ^{the} husband viz where
 the wife lived separate from her husband and tra-
 ded as a feme sole — she brought a suit against
 one of her debtors who called in her husband to swear
 that he was her husband — the court admitted him
 but upon a motion for a new trial he was rejected
 & the counsel or advocates at the bar are never ob-
 liged to be witnesses & testify what was commu-
 nicated to them by their clients in confidence —
 I say of all the parties agree to it the court would
 tell them to hold their tongues. I am sorry says
 the judge that communication in confidence
 are confined to this single profession. But how can
 there be any kind of reason in compelling
 the whole truth to be brought out of the secret

cannot be kept inviolate. it was while the Evidence¹⁵⁹
Term Reports which were entered in 1572
and in which this principle is advanced in 296
that no one who has given evidence to an instru-
ment by setting his own name to it can afterwards
be introduced as a witness to controvert the validity
of that instrument. This rule was advanced by
Lord Mansfield - but a reversal when Lord Kenyon
was Chief Justice (1783) this rule was reversed
and made the subject of a bill of exchange when
endorsed by the endorser of a note &c. and (they not being
interested in the event) competent witnesses to pro-
ve the instrument valid in their creation.
This is the rule as the law stands now & seems
to be analogous to former decisions - as that
where the three witnesses to a will were admit-
ted to testify to the insanity of the testator - and
another decision in Burrow 1244 -
another branch of this subject relates to the inad-
missibility of parole evidence in action on written
contracts. This being treated of partly under oth-
er titles and the authorities there produced it is
only necessary to take a short view of it & this per-
haps more clearly to show without author-
ities. Generally in cases of contracts reduced to
writing no parole testimony shall be admitted to
vary the terms of the contract but the law is not so settled

This is according to the strict legal import of the rule that the best evidence must be produced of which the nature of the thing will admit. It will however be not liable to the same objection as a parole evidence. It will certainly show the truth whereas witnesses may form a variety of views, as memory, present or mistake the facts. But this is not the only ground why parole proof may not be admitted in the construction of a written contract. It is manifest that there must have been a parole contract before a written one in a particular case. After the parole contract & before it is reduced to writing is the locus penultimus - the terms of the parole contract are liable to be changed or in need of alteration to the mutual consent of the parties. It is clear then that the testimony of a man who heard the terms of a parole contract may show an agreement quite different from that finally concluded upon. And it is necessary to introduce parole proof of the last verbal agreement - when the written draft may be produced - the written instrument must govern - it recites as it describes the parole contract. Thus if an action is brought on a contract - it must not be stated, &c. in writing. The debt cannot be made by the commission but it is an inducement to produce more testimony of a written contract than decided on - delinquency, absent.

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such evidence is totally inadmissible & the ^{2d} Evidence
will be produced in evidence must in-
evitably be non-suited. But to this there are some
exceptions thus if the written contract be lost &
this can be proved then parole evidence of its con-
tent is admissible - In such case the Judge
you can't introduce parole proof of the previous
conversation which led to the contract actually
reduced to writing but only to show the content
of the writings. "It is the written contract that the
parole proof must apply to - for not time was
eventually agreed upon but what was introduced
to writing. Another exception to the rule is where
the written contract has got in to the hands of the
other party. This exception stands on ground some-
what different from the preceding exception - The
party in an action on a written contract in the pos-
session of the other party may not only produce tes-
timony to show its contents but also to prove the
previous parole contract. There is no danger of
doing injustice to the other in this case because he
may show the instrument & preclude such evidence.
I take it says the Judge that testimony of this kind
is clearly admissible. In equity there is a much
larger scope of authority in examining the terms
of a contract. It is always presumed that the
written contract is in exact conformity & the ^{other} ~~written~~ ^{parole} ~~contract~~

But in case of mistake in writing the contract of
 publication now be made to be made & after a minute
 part of each minute the instrument will be ac-
 cordingly corrected. It case happened in a trial
 in the case in the same way as practice where
 the parties had given the minutes to a third person
 to draw a deed - & the deed was so drawn that instead
 of eighteen acres - eighty-seven acres were conveyed.
 This mistake tho the deed was read to them before ex-
 ecution was not discovered till sometime after.

Another set of cases is where no parole evidence will
 be admitted tho the contract itself is merely verbal.
 This is in all those cases where the contract is re-
 quired to be in writing and is good for nothing un-
 less it be in writing. All the cases of contract that was
 required to be in writing originally by force of the
 statute except one called King vs. Ingham & others
 apprenticeship & that by the judges who
 had then rise from some old English statute.
 Sometimes the law requires that a contract should be
 by deed. Thus a person can give me title to land by
 virtue of a deed - but when examining the writing
 you look at above down to the bottom & there find not
 in but a name - the seal being omitted the title is
 defective. But in Equity a written memorandum
 is enough to convey a title - yet even a law it is not
 true that a written memorandum answers as a deed.

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it is a memorandum gives no title but yet Evidence
it is sufficient upon which to ground an action
or damages. & that class of cases relate
is the legal import of the writing. & here the gen-
eral rule is that no parol testimony shall be
admitted for the purpose of explaining, contract-
ing or enlarging the demonstration ^{varying} of that intent
of the written instrument. They are liable to be
erroneous & uncertain from omission or mis-
placing the stops or the like but the party must
first go with the ambiguity, and uncertainty - or
no parol word shall be admitted to explain the
meaning - nor even to show that were a con-
dition which none is expressed in the instrument.
There are two kinds of ambiguity - viz, patent &
latent - when the former is the case no parol
proof shall be admitted to explain it but when
the ambiguity is latent - false or extrinsic then
you may show its meaning by parol testimony
thus where one devised to his son John - & a son
came up and said he had two sons, that name
here says the judge we are not at sea again and
to give effect to the instrument, you must allow
parol evidence of which an who meant. - &
where one devised his Manor of Dale when he had
two other sons, that name - to the charity school in
the place where there were two there - & the one

children of my friends &c. when there were none
 But this limitation applies to all cases in which
 every thing explained by parol testimony must
 in the long age of the book. It will not meet
 the instrument. As long as the parol is
 not contradicted by the plain import of
 the writing it is admissible but no parol evi-
 dence shall be received to contradict a written
 instrument. This is after deciding to the same
 children of E. B. and other parties the father
 bequeath the rest and residue of his estate to
 the children of E. B. - This must go to all their
 children as it will not stand well with the
 vice. But where one devised to the testator's issue
 at White Tower, parol proof is allowed which was
 the person was alive and had no children.

It is a general rule that no parol testimony
 shall be admitted to explain or contradict in the
 instrument - However great the loss in consequence
 of the instrument - The maxim must be re-
 tained from the face of the instrument. The rule
 however does not apply to single words - Thus
 general terms are made use of you may there
 introduce parol proof to show what was intended
 I can better explain the maxim and the usage
 by an example - Thus soon after the death of a
 person

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came into use subsequent to the Norman French *Ordielle*
there was a strange perversion of the Latin - by
intermixing with it Norman French - so where one ^{the post st.}
devised to his senior powers it was doubtful whether a *Devise*
son or a daughter were meant - for the phrase if
used by a male would clearly mean a male yet by
the mixture of Norman French with Latin it meant
sometimes a boy & sometimes a girl & sometimes
a child. - In such cases parole proof may be ad-
mitted to show which was meant. This is intrin-
sic ambiguity - But a term may become doubtful
from external circumstances - as if one de-
vises to give to his children - nothing when the face
of this appears ambiguous - but it is evident that
he has got no children - therefore this fact may
be shown in evidence and the devise instead of pass-
ing an estate for life to the children &c. if he had
any - it passes a fee tail to &c. - Formerly the word
estate was ambiguous - the uncertainty consisted
in its being taken for an estate for life or a fee-
simple - This word means now not only the
description of the estate but all the interest he had
in the estate - The statute a man's executor of-
ten governs the estate to be conveyed - thus if one
devises to give all his estate - charging him to pay
debts in legacies - the whole estate not being worth
10000 - the life estate may not be worth the next 10000 -

Evidence - There are words which in a legal sense have a certain precise definite meaning - & in common parlance are used quite differently. The legal construction is to be put upon all such words or phrases used in an instr. must except when it would be this means render a consequence ^{in a legal sense} ridiculous. Here you may shew by parole testimony that the word were intended to be used as in common parlance (ie) you may shew facts which would evidently lead to this. Thus where devised to ^{the} Belsham in London - she first was not had a life estate and more than a life estate in the Tavern before by a bequest - this fact may be shown in evidence and then it will appear plain that the testator intended to convey to her the reversion. Altho men may make use of terms not strictly according to their legal sense yet if the facts are so joined that it would render the given ridiculous and defeat his intention to give the terms a strict legal construction - and on the other hand if the facts are such as will comport with the common reception of the terms then these facts may be shown in order to give the terms the latter construction. Another class of cases which is principally a ground of application in Equity is where altho you cannot go directly to show the terms of an agreement - yet you shew facts

from which the term of an agreement are *willence*
inferred - since the borrower took & gave an
absolute deed of land to the lender. In order
to make out that this is a mortgage since it
can not be shown by parole testimony that the
parties agreed to consider it as a mortgage
the law will set its face against this. - It ab-
solutely prohibits solemn instruments like this
to be destroyed by the recollection of living wit-
nesses. - But each may always be shown tho
from the inevitable inference from the manner
instrument may receive a different construc-
tion - in the case just now just you may show
that it has always been in the possession of the lender
& has never paid red - that it has ever paid out
the interest of the loan - & that the lender could not
sell a mortgage for a debt ever paid & paid for it
by this time every body would think it was a
mortgage & the court would so consider it. So
where one made an absolute deed to another
of land - and by parole agreement the grantee
was to give to another child or son &c. as an
advancement & you had son & daughter who
were heard the contract made they could not be
of them be admitted to testify to the terms of it
But you may fill your bill in Chancery & compel
the grantee to swear that he holds the land in trust.

Evidence - If a man obliges another to purchase a house & land for him & take the deed & in all - Chancery will compell him to come in and disclose the truth.

Parole testimony is always sufficient to rebut an equity lies in instruments where a court of law would not construe upon them and a court of equity would not construe - Parole proof may be admitted in Chancery to give the instrument a legal construction but parole proof will never be admitted in a court of law to give an instrument an equitable construction.

Thus in mortgages - let the mortgagor use what words he will that he will not redeem after such a time - yet Chancery will at their discretion extend the time (ie give him the time for the next year or so) - But in a court of law the estate mortgaged is considered as sold and the time limited is the time of redemption - And also it is a rule that the creditor shall have the redemption - but in equity if the creditor has a large lease the redemption is to be considered as intended estate yet parole testimony may be admitted to show that the creditor intended to give the creditor the redemption notwithstanding - Parole testimony may therefore be admitted in equity to rebut the legal construction and give an equitable

The proof of a set of facts from which the *Evidence*¹⁴
facts intended to be proved are inferred is called
presumptive evidence. Thus in a suit upon a
given security - you may go into court & tell them
you have not a single witness to prove the money
but you can prove that the holder of the bond had
during the whole of the time been directed to me
and I had never called on the obligor for any
part of money on the bond - you can prove also
that the holder of the bond had borrowed money
of the obligor at various times & repaid the same
with interest - & the court will presume that
these extraordinary facts, prove to the length of
time since the bond was given - is presumptive
evidence that the bond is paid. - Elements
where deals of three kinds of presumptive evi-
dence viz. violent probable & light or weak - the
last of which sees the judge is said to be weak & weigh
little and therefore is to be thrown into a side -
probable presumption of itself is more sufficient
than which to find a fact so that this may al-
so be thrown out of view - & there remains but one
kind of presumption that is sufficient weight
upon which to infer a fact - viz. violent presumption
But what is called by civilians violent presumption
presumption is not useful for this it may appear
in some instances but probably presumption of a fact

Evidence may either offer a direct presumption
 or fact can be inferred from a general pre-
 sumption. Direct presumption is shown by
 inferential terms when it is said that the writer
 or witness is aware of the fact. For example, the
 judge has been known to say, "I am satisfied
 with the proof of a combination of facts leading
 to the fact that a man is a murderer and
 really honest men have to face a hard time
 but the present case is not in either case
 not strictly a matter of fact. Where
 you cannot show any rational hypothesis, re-
 cognize the fact proved directly with the non-ex-
 istence of the fact a man to be proved - in fact
 concluding that the other facts alleged to be proved
 are true the present case is a matter of fact. The system
 and was called as follows a case - it
 was in fact that we were to see at the same time
 the evidence before - that tracks were made from
 the house to the road - that a piece of cloth was
 found attached to a post on the house where the
 supposed man entered - that a man was seen
 coming in at the door - that a man was seen
 in a particular - the present case is a matter of fact
 that the man was the same.

It may also be inferred that a direct inference
 can be made from the reason on which

the rule is founded is that all testimony Evidence¹⁴
must be under oath. & witness may swear &
that truly that he heard another say that &
then & yet the fact of which he heard him say that
may be false - for he was not under oath - But
suppose one swears another testifies to a fact under
the solemn ties of an oath may not that be given
in evidence? So then there is another objection if
the first witness be living he must be produced
also the first principle that the best evidence must
& produce which the nature of the case will ad-
mit will be violated - But if the first witness be
dead then his testimony may be given in evidence
And it is true as a general rule that no hearsay
evidence is admissible yet there is one exception
What one has said in articulo mortis - in the so- 3 Bar
lemn moment of death - in contemplation of death 1298
- supposing himself to be dying - is admissible
as if he declared that he had - & would do -
do what one has said against himself may be
given in evidence - There can be no hazard on the
ground of its not being true - nor danger of perjury
because mankind are not inclined to make con-
fessions against themselves - much less to say what
is untrue against themselves - But to this rule this
qualification must be annexed - viz that when you
allow that to be given in evidence you must connect

without all that was said - Thus if one had ever
 heard to say that we had admitted & admitted a note
 is - but that his antagonist had sworn to come at
 him with a bit of fork &c. the latter must be taken
 in connection with the former. But the jury are not
 of course obliged to believe all that he said - they
 may as in all other testimony, believe a part and
 disbelieve a part. & so much there will be allowed as
 introducing what one said in his own words - which
 it was said in the presence of the other party - Thus
 if A had said in the presence of B & C that he saw
 a thief & stole a sheep - & B & C made no reply but let
 him go on with the same story then this may
 be shown in evidence and inference drawn against
 B & C. There are cases & cases the place in which hear-
 ing testimony is the properest & best - some depend
 on one principle and some on another -
 general report of the doings of a man after long ab-
 sence is admissible - & also the general charac-
 ter of a man as to truth &c - & testimony to prove
 a single instance of dishonesty will ever be admitted
 but the witness is to say what is the common re-
 port - he has no business to say what he knows but
 what others have said of him - & a witness is ex-
 cluded where his character does ^{not} come up to inquiry.
 I know of no question usually put to witnesses so little
 understood as that concerning the general character of a man

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Since the instance say, the judge which ^{the illustration of the law} ~~experience~~
differed in the town where a man, who was a
witness against the person whose character was to
be impeached - being called upon to testify to the
general character of another - seemed to under-
stand the question very well - tho he was some-
what disappointed at the form of the question,
for he wanted an opportunity to wreak his ven-
geance upon him. Why, says the man as to his
general character I believe other people think
very well of him & consider him a man of rever-
ency - But I know him to be a devilish liar & a rascal. And
now it is my turn to say - I was observing him, that he
never had any deal to do with the man whose charac-
ter is about to be impeached. What a witness has
said before he testifies under oath is admissible
by way of impeaching or corroborating his tes-
timony - in the one case to draw from his testi-
mony & in the other to show that he has already
told the same story. What a question comes
into the head of the hearers of a man - what would
the family have said on the subject of a marriage? 283
So in questions of legitimacy of a child - what should
the mother or father be said as to their being mar-
ried or not at the birth of the child is admissible. But
so also what people especially old people who are
dead have said respecting the deceased is admissible.

Irrelevant Testimony is often objected to on the ground of its irrelevance - Irrelevant testimony is such as does not go directly to prove the issue. Thus if a plea of payment is traversed - Accord & satisfaction is irrelevant to the issue for if one has delivered over a note of exchange or a horse in satisfaction of a note of hand for the payment of money - it must be treated as such and as full payment - so y^e testimony which bears upon one of the issues is not irrelevant - thus in the case of *Wheaton v. The Bank of England* what was objected to was the fact traversed - or the genuineness is wholly immaterial - and evidence is produced in support of this fact. I have entertained an opinion on such cases have differed from most of the judges in the *Bank of England* on this subject. It is generally the practice to let evidence be produced and a verdict be given - & then arrest the judgment. But in all such cases it will save time - & preclude perhaps a long and tedious trial to reject the evidence & non suit the party. Thus if one bring an action against another for not pulling off his hat as is required by law and the defendant prove a custom instead of declining to the declaration as he ought to have done. Or if an action be brought against one for making of the whole he is a liar & generally so.

evidence case the judge says it seems evidence
 to me that the evidence in support of the issue
 ought to be rejected & the proposition made. & in
 singular case says the judge in support of the
 evidence in this subject - after the testimony on one part
 was ruled out - the counsel on the other part
 moved the court to direct the jury to give a
 verdict - or his client - the court sustained the
 motion as they must in all cases where a
 party insists on a verdict - and the jury then
 they were directed accordingly. It is not the duty
 of the other party to contradict the evidence
 so as to prevent a verdict. The jury are witnesses
 are obliged to testify to that which is
 common to themselves - or subject to their
 knowledge. But as the legal obligation must
 be borne by the party, the obligation can then
 be completed by the jury - of the fact that
 has a tendency to increase the number of the
 those cannot be avoided by it. & women may
 be compelled to disclose the fact of her infidelity
 while because the fact of illegal cohabitation be-
 ing exposed to be a crime, however - it can be no
 addition to her turpitude to disclose the fact
 so if one file a bill in bankruptcy & combines the matter
 of a wife to swear whether married or not it is
 not reserved - he will not thereby, in fact, be a witness

But if a bill were introduced in a court to allow
 the witness to swear whatever he saw or heard
 without having any interest - he would not be obliged
 453 to answer - or he would thereby subject himself
 to a penalty of perjury the value of the obligation
 in law & honor &c. & finally, & having his credit
 & his mind ⁱⁿ ~~in~~ ⁱⁿ a manner the same
 as to the manner of getting at the testimony
 the result of confidence in general knowing no other
 or more than that of living witnesses, or viva
 voce - there are cases & cases where evidence is
 taken de bene esse - & brought into court in writ-
 ting. Depositions then taken - before the justice
 such a one - a statement made to me a little while
 ago - in the court of justice that depositions are
 taken - is when the witnesses are sick or at sea
 The practice of the courts of Chancery is directly
 the contrary - they have no testimony viva voce
 - it is reduced to writing by the clerks in Cham-
 ber. - In Courts of law depositions are allowed
 454 to be taken in any case if agreed to by the other
 party. And the court in some cases have al-
 most a compulsory power to make the other
 party answer - as by compelling the cause
 Our practice in law is the same in principle as
 that in England - Depositions may here be taken
 in all cases and improved in any case of law

provided the witness be about 12 or 13 years
 more than twenty years from the time
 where the action is to be tried - but in either case
 notice must be given the adverse party to appear
 if he so cause, & cross examine the witness. This
 rule applies only to civil actions - in criminal
 cases the mode of coming at the testimony re-
 mains as at Com. Law. The practice in our
 courts of Chancery is the same as in our Courts
 of Law. As to the number of witnesses the Com-
 Law requires only one in ordinary cases. One is tho't
 to be sufficient to testify to any fact. But say the
 judge & question whether any one single depo-
 sition taken abroad is sufficient - it seems
 to fall short of the quantity of Com. Law testi-
 mony. The reason why the Com. Law of Eng. required
 but one witness where the Civil Law required two was partly
 probably because the jury were originally taken
 from the neighbourhood of the parties & they were so lit-
 tle disposed to know so much about the matter as to
 want as one witness - This reason however if it was
 ever sufficient to justify the deficiency of evidence
 does not apply now for the jury are now taken
 from the body of the County. Exceptions to this
 rule therefore - that at Com. Law it requires two
 witnesses to convict a man of perjury, because
 if only one witness were sufficient - it would be calumny &

oath against each other - and the testimony of one is on an
 unimpeached stand at least upon as good a footing
 as the other. In England there must always be
 two witnesses in order to convict one of a treason.
 It is not necessary that there be two witnesses to
 the same overt act - but before there must be
 two to make out the crime. In this State there
 must always be two witnesses in order to con-
 vict one of a capital offence. is the one testifying
 to the fact directly - as the seeing him do the act
 this will not be sufficient to convict him - un-
 less there be some other presumptive evidence
 161 But if the offence charged depends on the proof
 of a concatenation of events - then one witness will
 be sufficient.

as to the mode of compelling the appearance of
 witnesses in court - it is done by a writ of subpoena
 in order to lay an obligation on the witness to
 attend by the law of this State a Justice of the Peace
 or the clerk of court reads him a summons to be
 served on the witness by the sheriff or some other
 person - the doing otherwise is a contempt & fees
 must be tendered. But suppose the summons is
 recd. to him & he is contumacious & refuses to come
 in this case by application to the court a capias
 may be taken out against him - or you may go on with
 your suit without him & in case of failure in the

want of his evidence - he is liable to all Evidence
the charges. but there may be difficulty in pro-
ving that the witness was recusant to the
service of the court. In case the witness refuses to
testify after he comes into court - an attachment may
be issued - in contempt of the witness he put in jail & has
till he will swear - but when the court rises he may
get discharged - & after this there can be no chance
for him to testify - If however he had been called up-
on to testify to a deed or the like - he may be kept in
jail after the court go. A singular case says the
Judge occurred in Litchfield some time ago when
a prisoner was removed from the jail by a writ of
habeas corpus ad testificandum - to testify in court
& upon being brought into court - he refused to be
sworn - The court told him what was the punish-
ment in case he refused - viz that he would become
mad & die - He says the man is a miser & more
& am already there - The court found that they
were - tried & could proceed no further - but the man
was afterwards prevailed upon to testify. Witnesses
are privileged from arrest in going to & returning
from court or in the later proceedings - under mo-
randa & reverends. If the witness is arrested on the
road - some process is directed to liberate him - in
this State our courts give the witness what is called
a subpoena - which he may show whenever he is arrested.

written - The first branch of written evidence relates to
 records - all legislative acts and decrees - &
 judgments of courts are included in the term re-
 cords. Their authenticity is never questioned.
 The form only of a judgment of court may however
 be questioned by a writ of error in most other ways
 as has already been mentioned - but generally the
 truth of a judgment cannot be called in question in
 a collateral suit. This rule relates only to parties
 that are suing to the judgment - in the *inter vivos*
 kind of the cause - thus suppose it was *Bincham v.*
~~and so on~~ ^{the same} ~~the same~~ ^{the same} - the judgment
 in *Bincham v. Bincham* is binding on *Bincham*. But if
 the parties to the cause are a *procurator*, then the
 truth of the judgment is in question. There is no method
 of denying the validity of a judgment that exists
 except as above to null a decree in the existence
 of that judgment any *inter vivos* decree is an issue
 of null and void. As to the nullity of the judgment
 every citizen is bound by them. They are a part
 of the law of the land. They are a part
 of the judiciary. The legislative power is always
 limited to the *constitution* - the judiciary have
 no authority to make laws in relation to the
 the *constitution*. As to the question whether we
 were a court of law or not in this state there seems
 to be no difference of opinion in substance.

It is true we have no constitution in books
 while as in the State around us at the same
 time we have a constitution in effect & in this
 particular we resemble that of England - we often
 hear of a law being set aside by the judiciary
 as being unconstitutional. But the difficulty is
 how to proceed after a law is enacted & here it
 has been suggested by the judiciary. If every
 man undertakes to decide for himself as to the
 constitutionality of a law - & to break a law or
 not according as he forms a opinion then ~~the~~ law
 cannot strictly be called a law - & have any binding
 force till a decision is made by the judiciary. The
 moment the people assume this power they as-
 sume the judicial power. Private acts of a
 legislature are binding on the parties concerned
 only. Thus if a general law of bankruptcy were
 passed - as was once the case by the legislature of
 the United States - this binds all the citizens but
 if an act of incivility is passed in favour of a par-
 ticular person it binds only those who are sum-
 moned to make objection to such act, and they
 alone. The judgment of a court binds those on-
 ly who are parties in the suit. Thus suppose
 A sells land to B - & claims the land - brings
 judgment & recovers - B turns about & sues A then
 the writ runs - & not being reached in as a party before

158 Written July 2. I am writing against co- & if you will mar-
king arguments against it - because some will
say to the first law made - but need be in a
case in - in the former that the former judgment
might have been placed in it.

What of the Legislature are said to be general or
special - or as others say, public or private: What
ever act concern the whole body, the law, it
is an act of the Legislature are denominations
and in public - Thus if it were enacted that all
mechanics should have seven days at their
trade - it would be a general law - but if it were
enacted that every person should have seven days
at his trade it would be a law in all cases
a general law it is necessary that it should be
expressed in some manner. The law is
to be extended to all who are in it. It is true
that in not many situations we are the whole thing
known in the course of their argument after. He
in the whole and read it but this is only to
show the cause of the controversy that act of the
4th. civil act of the law but it is usually decided spe-
cially. It is said there is some law in it that
they must always be specially decided. But this
is not correct. It is sufficient if it is shown in evi-
dence - in the same way as a judgment.
It is not necessary to show in evidence a special

act from a printed statute book but it must
 be official and genuine under the hand writing
 of the proper officer - as the Secretary of State.
 There are cases where both public & private Acts
 must be specially pleaded - as when one
 would avail himself of a statute to avoid a
 claim. Thus if an action is brought on a bond
 and there is a statute - but if the action be brought
 on a simple contract or simple contract as if
 money is given in evidence. For one law as to
 one, it is given in evidence notice the general rule
 whether the action be on a specialty or not. As to
 a debt note, the court notice must be given.
 If an information is brought on a statute - the
 and another statute exempts the person from the
 offence under the latter statute must be pleaded.
 There seems to be no principle in this respect
 here - for taking the statute together as it is not quite
 by - & were the law not so absolute - I should say
 that it might be given in evidence. A statute pro-
 viso may be given in evidence. He who pleads
 in law in evidence a private statute must have
 a copy exemplified & certified by the Secretary or
 other proper officer. But the laws of the colonies
 or states may be given in evidence and this too
 from a printed copy. The court are not bound ex-
 plicitly to take notice of foreign statutes. In some cases

Written test. The court is now so well that the statute is
 not in force. - but if it is in force on the an-
 nual part the statute must be produced. Since a pro-
 misor may be in breach of promise & the in-
 dorse may bring an action in his own name
 but here the holder of a note must bring an ac-
 tion in the name of the promisee for the re-
 sponsibility of notes is not admitted here. If there-
 fore a note be executed in breach of promise &
 the indorser may sue upon this note in his
 own name before a court in this state provided
 the obligor live in this state. - He must in this case
 produce the statute in evidence if required to
 prove that the indorser may bring an action in
 his own name. It need not be proved by copies
 duly sworn to & authenticated - The record it-
 self cannot be transmitted abroad. In England
 there are two kinds of record of location - one un-
 der the broad seal & the other under the seal of
 the court. - Statutes of this nature in the
 sealing is of but little use in the state. Copies of re-
 cords of the courts in this state must come under the
 customary seal of that court. An office copy
 must always be procured when it can be done. but
 as the clerk of a court may be gone at a distance - or
 sick or dead - an office copy cannot be had - in such
 case a copy taken by some other private person

is admissible - but more it must be shown
 by competent testimony that an office copy could
 not be had. An exemplification of a clerk is suf-
 ficient when it is taken in the state - but if
 it is taken out of the state - the judge who appoints
 the clerk is to certify that the exemplifier is the
 clerk - The secretary of state is to certify that the
 judge is legally appointed - & the Governor is to cer- 10
 tify that such a man is secretary - here the pro- 11
 cess stops - it must be taken for granted that he is Salk
 the governor. In cases where the record is lost 285
 a copy of it will be admitted without being sworn
 to - as where a corporation have practiced a long
 time under a charter. Where the action is found-
 ed upon the existence or non existence of any re-
 cord a writ of inspection issues under the plea
 of nullified record - This gen. issue does not decide
 & is contrary to other gen. issue as put to the court
 of former verdict by the jury in some cases was
 made in evidence. But the verdict must be between
 the same parties on the same point & proved not 31
 to have been set aside - Then suppose a writ 148
 of ejectment against A and recover black acre - & then
 afterwards bring another writ of ejectment against A
 to recover white acre depending upon the same
 precise ground of claim - the verdict in the former
 case may be given in evidence. But suppose A has

large piece of paper & be very unjust in ma-
king an answer without the sanction of the committee
is very much questioned & not whether or not
an answer in chancery is itself wrong, al-
though taken against him. & that in some of the
states where the respondent never answers, an-
swers taken without it be sanctioned by the court. & it is
to be the case that the most part in such cases - in 221-48
answers must be taken against him & introduced 1287
in evidence. But if the bill in chancery is not 256
introduced upon in chancery then neither the bill itself
nor answer can be given in evidence. Extracts 107
from answers in some records of a court cannot be 285-8
admitted - unless the whole be produced in evidence 72
of answers answers can never be taken and in- 30-100
troduced against a party. Some answers to bills
prove an answer in chancery. In some cases the
bill as well as the answer in a court of equity
have introduced of the answer. The ground then is
that the answer in chancery was never introduced
in this respect it is being received as a sufficient
in evidence. The meaning is itself sufficient. It is
of its being sworn to. But if you can show that it
affidavit was used in court then it is presumed
to be sworn to - because affidavits are never used
in court unless they are sworn. An affidavit being
deposited in the file is no presumption of its being used

In an affidavit it being no part of the record it
 is not necessary to send it to the clerk to be filed there.
 In the affidavit for perjury the
 affidavit must be sworn to and then sworn to.
 The copy of an affidavit certified to the proper
 officer in chambers is sufficient for the copy
 as a sufficient evidence because it is
 no part of the record. The affidavit must
 be sworn to of deposition used in chambers
 may also be sworn to and may be used
 again in chambers - & also in a court of law
 provided the parties agree to, & to trial upon
 depositions. The trial must be before the
 same judge - and the witness, same before
 absent or dead. So if a man is apprehensive
 that he shall otherwise be near of the testimony
 of an aged man or one that is soon to die, it
 is a foreign country to reside - to improve on a
 trial at any time afterwards. He may make ap-
 plication to the court to appoint commissioners
 for the purpose of taking depositions in perpetuum
 memoriae. There is one objection that may
 be made, no man should be allowed to be sworn
 any other. It is a general principle of law that
 if the law requires anything to be on record it can-
 not be sworn without the record being a copy of the record
 duly certified. This it should be observed is quite dif-

different from the law requiring a thing
to be recorded. Thus a judgment is required to
be on record not for the purpose of giving it ex-
istence as is here the case with deeds. A copy
of a judgment is admissible in evidence but
a copy of a deed recorded is no evidence - the deed
itself must be produced. There are certain things
which the law requires to be recorded yet other
proof is admissible - thus in this state the law
requires that the births & marriages shall be re-
gistered in the town clerk's office. But it is an
every day practice to admit parole testimony
of the birth & marriage of a person. The prin-
ciple seems to be this in the distinction of deeds
& births & marriages that where the law requires
a thing to be recorded in order to give it validity
or existence - here the thing itself must be pro-
duced in evidence - but the ^{proof} recording of a mar-
riage or a birth doc. not make the person the
leg. married or the leg. born. In this subject
any thing else & approved on principle is
not a good one. We say that in such case if the
birth or marriage is recorded & convenient to be
made - a certified copy of the record one is admissi-
ble. The transition was so easy that we slid
into our old practice & now make a certified copy
of a record almost concurrent with the record itself

and not a copy of it. Some suppose of course "Evidence"
is not a title to land but it is a title to it. If
it is not a title to land it is a title to it. It is
to know the deed is a title to it. It is a title to it.
as if he owned the land himself. In all these
conventional estates the tenant in fee simple
must as the deed is in a copy or a grant
show where a man buys land he must not only
take a deed from the grantor but he must take
all the deeds that were delivered to the grantor
& in order to make out his title he must show
them. In England there are four counties in
which deeds are required to be recorded. - In these
states they are uniformly required to be recorded.
It was formerly questioned and it remains in
question whether in Eng. whether the copy
of a deed from the record is admissible in evidence.
In this state the deed of the land is a title
it is not sufficient if taken from the record. In
the deed it all must be admitted. - But as it is
not the custom here to take the title out of the
grantor's hands all the deeds ^{in the} ^{state} are
made - a copy of them from the record is sufficient
this business of admitting deeds from the record
may be made a very dangerous practice
the great trouble is that the practice is not
uniformly recorded. Tenant in fee simple and he

who will by virtue of execution be
 not bound to answer because they are not
 the authors of the deed. But a man by the use
 of his pen may become bound to answer
 for the deed, if he is the writer, or if the
 deed is put into his hand. The other, who
 is not bound by time and accident. When a deed is
 brought into court the subscribing witnesses
 must be produced to prove that the deed was ex-
 ecuted in manner & form as it purports to be.
 If these are out of the reach of process their
 hand writing may be proved in common form or
 other witnesses may be produced to testify to its
 execution. The proof of an instrument being ex-
 ecuted by a man by the handwriting is a dan-
 gerous practice - especially where the writer is bad
 for says the judge the hand writing of bad writers
 resembles each other more than that of good writers
 it case once occurred in this town where an man
 indicted for some offence & the proof was to be made
 out principally from the handwriting. The fact
 was a school master who taught in a school
 was a good writer himself & taught his scholars
 to write so nearly alike that no one would hardly
 be able to distinguish their hand writings. A man
 was called upon to prove that the writing in question
 was the hand writing of the prisoner, another

piece of writing written by another of this
 schoolmaster's scholars was presented and he
 swore that this was the prisoner's writing also
 this put the business afloat. I was once engaged
 in a cause says the judge in this town also when
 there was a similar difficulty. Was a law of the
 State the officer is not allowed to fill up a writ-
 if he does it is voidable. The council appeared
 to me and pleaded in a solemn manner in this ground
 & I was about giving up the point for it looked
 to me like the officers' hand writing. However
 I thought I would write to the man & find out the
 matter & accordingly wrote. The officer sent his
 son express to testify that he himself wrote it &
 not the father. It appeared that the father had
 in mistake his son's for his own hand writing.
 The deed must not only be proved to be executed by
 the grantor but also to be delivered for no deed
 can take effect unless it be actually delivered. But
 as this is seldom the case that witnesses see the deed
 actually we must resort to some method of determi-
 ning whether or not the deed was effectually deliv-
 ered. & the method now in use seems to be directly
 opposite to the true principles of law. The pro-
 secution of the deed is ^{presumed} presumptive evidence of the
 delivery. This presumption however may always be
 rebutted by hard testimony. - I am say, page 110

are an adopted son of his mother. The father
 being much attached to the said daughter, he gave
 his estate to him & said deeds drawn accordingly, tel-
 ling his wife that he intended to give them to the said
 son & that they were his son's & with a view to keep them
 till he should please himself. He found out that
 the deeds were there & without the said man's consent
 had them recorded. He behaved rather cruelly after
 that, seeing he had got the possession, the said & the
 said man brought an action against him & recovered.
 It happened that he gave with the deed for thirty years &
 100. The deed is without blots or any other, so need be intro-
 110 duced to prove the execution or delivery. The law was
 120 formerly so strict that parol testimony could not
 130 be introduced to show that will not out of the said
 140 & that it was not the deed was good for nothing.
 150 8-9. It is then be a joint specially contract and the act
 of one be sufficient if it was a good deed. But otherwise
 if it had been a joint contract. The subscri-
 bers witness becomes in 4 years after signing his
 hand writing may be proved in common form. It is
 160 now all the subscribing witnesses to a will are dead -
 In one case where the will was attested by a witness
 170 who was dead - This act was considered one ground
 180 in expunging the will. But in all cases where the
 subscribing witnesses are dead the common way is
 to prove the handwriting.

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PLEAS & PLEADINGS

Pleas & Pleadings are defined to be the mutual al-
 legations of the parties taken in legal form and put
 in writing. and the pleading is required to be in writing
 as early as they were made and hence pleadings are still to be
 made in writing to the court. 10th Ed. 182
 are also required to be in the English tongue. 5th Ed. 182
 the request in the time of the 11th Ed. in the 11th Ed. Pleading
 was enacted by the 12th Ed. that the pleadings should be in 20-29
 the German or French tongue - after this they were req. 3d Ed. 182
 to be in the Latin language - During the Pro- 317
 tectorate of Cromwell they were required to be in
 English. - After the accession of Charles II to the
 throne the Latin language was revived - but by
 Stat. 4 Geo. II which continues to be in force at the pres-
 ent day in England all the pleadings are required to
 be in writing and in the English language. Pleading. 182
 are no more than the setting forth upon the record 3d Ed. 182
 of the facts and circumstances of the case and the
 demand of the plaintiff. The great object
 of pleading is to state the claim of the Plaintiff and
 the defence of the defendant so as to avoid all any

Pleas &

March 19

and speech trial - not being the subject of the opinion
of the parties to one precise definite point. This
would be a conspiracy on the part of the plaintiff
doing but a substantial and irregularly advised
matters in popular circles. Every good plea &
even a declaration contains in substance the elem-
ents of a good syllogism. As if the action be trespass
where claim in Reg. 3. the right of the plaintiff to
recover in the declaration may be resolved into the
form of a syllogism thus "Against him who has wrongfully entered
upon my land I have a right to recover damages. The defen-
dant is, & he has entered upon my land. Therefore against him
I have a right to recover damages. The first or major pro-
position is the legal principle and contains the pr-
ovisos on which the Plaintiff relies for recovery
the second or minor proposition contains the facts
to which the legal principle is to be applied. The
third or conclusion contains the inference of law
from the application of the legal principle con-
tained in the major proposition to the matter of
fact contained in the minor proposition. Either
of these propositions the defendant must be at
liberty to deny. The denial of one if he succeeds
will be sufficient to overthrow the Plaintiff's action
but he may if he chooses deny two or all of them
The major proposition is to be denied by an issue

in law and the question which is to be raised by a Plea of
denial? it is to be determined by a court of law
the operation of a demurrer is to admit the facts
in the minor proposition but deny their suffi-
ciency in law for the Plaintiff to recover. The mi-
nor proposition is to be denied by an issue in fact
and a general issue and ought to be tried by the
jury. If the Defendant admits the major & mi-
nor propositions he cannot recover unless he al-
leges recoupment - i.e. unless by special plea in
bar - as if he pleads a release - and then this plea
of release may be resolved into another syllogism
thus, if he in whose land I have trespass has given a release
his right to recover demands has ceased. The Plaintiff has re-
leased me. Therefore his right to recover has ceased. The re-
sultation or answer of the Plaintiff to the defendant's
plea of release will be if he denies the major prop-
osition it is an issue in law for the defendant - then
admitting the facts of release but saying a release
will not bar his right of recovery. If the Plaintiff
denies the minor proposition - then he carries the
burden of proof - denies that it is in fact done - and it is
an issue in fact to be tried by the jury. If he admits
the two first he must still deny some new matter
as if the release were obtained by fraud - this may be
set up in the replication & resolved into a special issue in fact.

Plead & The first stage of a suit is in all cases in this
 5. *Ston.* land a Writ. This is a writ signed either signed
 6. by some Magistrate and issued to the Sheriff directing
 7. him to attach the goods; the defendant named in
 8. the writ or summon him or make him to know &
 9. that in case of attachment & no answer, interest or bail given
 10. the Sheriff shall seize his body & bring him to appear &c

41 This is the commencement in *Debt* cases but in
 the Court of King's Bench, & B. the suit is not com-
 menced till the Bill is filed & even here in strictness
 the suit is not commenced till the *Latitat* be issued
 in connection the writ & declaration issue together.
 The writ is the original foundation of the declaration
 or cause of suit stated. The suit here is not commenced
 to all purposes until service has been made upon the
 42 defendant. It has been decided in this state that Ser-
 43 vice before actual service is made is good even if af-
 44 ter issuing the writ. The cause of action must al-
 45 ways exist at the date of issuing of the writ.

46 The first stage of the Pleadings is the declaration
 47 This contains the ground on which the Plaintiff
 48 founds his demand - This is sometimes called the
 49 count and is only an exposition of the writ. The
 50 amount of the writ is only to command the Def. to
 51 appear & answer in a plea of *Verdict* if the action be
 52 *debt* - or in a plea of the case if the action be *ad rem*

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in trover &c. In England the writ frequently was used ¹⁷¹
is not it is an action - but in the writ it is not
anything to do with it. The reason why it is so in Eng.
is because the court of KB had not originally cog- ¹⁷¹
nizance of civil cases until the defendant was actu- ²⁵
ally in the custody of the Marshall. But the writ ²⁵
where there is an action ²⁵
which makes the defendant in case he is defeated sub- ¹⁻⁶
ject to a fine payable to the king and therefore the
defendant is supposed to be in the custody of the Marshal
or sheriff. As if the writ command the plaintiff to ap-
pear and answer in a plea of Trespass then come the
word and also in a plea of Debt &c. It is frequently the
case that Lawyers & Law writers speak of the declara-
tion and pleading as distinct things - this is not
~~strictly~~ true - the first is the pleading commencing
in the part of the plea - then comes the plea - in the
plea part. Pleas on the part of the plaintiff may be di- ¹⁷¹
vided into two kinds - I Dilatory pleas & II Pleas to ²⁵
the action. Dilatory pleas are such as tend to de-
lay the suit by questioning the mode in which the
action is brought rather than the right of action
and are subdivided into three kinds - viz 1 pleas to the
jurisdiction - 2^d to the disability of the Plaintiff and
3 pleas in abatement. This is the Division made by
Bacon. But the result of this division is

Having given you the heads some idea of Pleading,
pleading in general I now proceed to lay down the
general rules of pleading. Two things are necessary
to constitute a good plea viz. upon which to found the Plff.
or deffs right of recovery 1st that the plea be in mat-
ter sufficient - & 2nd that it be deduced and expressed
according to the forms of Law. If either of these be
wanting the plea is bad - If the first be wanting then Hel.
the plea is bad in substance and cannot be aided by 164
a verdict of the jury. - If the second be wanting the comp.
plea is bad only in form and is aided by pleading C & D
over or by verdict. The omission of either would be Lawes
good cause of demurrer. - The first can be reached 4-5
~~by~~ ^{general} demurrer - The latter ^{only} special 5th
demurrer. It is only necessary to state facts in 70-5
in the Pleading and as the case may be conclusion Dene.
& fact but not law or the conclusions Law. This 159
relates only to general law & not ^{to} particular law Lawes
as Customs - private acts of Parliament &c. Accn. 46
clusion of fact is thus ~~the~~ In an action of indebi-
tatur abs. utter & saying that the defendant at
such a time and place became indebted &c you
conclude, and in consideration here did assume and promise
to pay &c. This is a conclusion a fact from the mat. & not
the effect that he was indebted. --- Every plea should set
out direct and positive argument & not argumentative

Please. or by way of release. But with respect to an im-
 material fact if it cannot be shown to the satisfaction
 of the jury by direct evidence it is not necessary to be directly proved but a circumstance or
 (whereas) will be sufficient for the introduction of
 evidence of each immaterial ^{fact}. Because or Altho are sufficient
 to be direct for the introduction of any fact which
 is material tho the whereas is not. It is not
 sufficient to state that the evidence of the prin-
 cipal fact is established - thus if after having
 alleged that the defendant was indebted by a certain
 note & having introduced the App. process by
 which the defendant became liable to pay - this is in-
 sufficient - it should be then by which the debt was
 incurred - or if he declares upon a note of hand saying
 that the deft executed a certain writing which contains
 a promise to pay &c this is not sufficient but he
 must aver that in and by that writing the Deft
 promised to pay &c. for the writing itself is only the
 evidence of a promise - or debt. - In answer of the
 Plaintiff's state must be shown and proved it is
 not sufficient merely to state a conversation for con-
 version is the gist of the action. If the Plaintiff
 states that he can prove by John Miller that the Deft
 promised - it is not good. It is a general rule that
 each party admit as much of the allegations of the

other rule does not deem in the said Pleas & Pleadings
 doing. Another general rule is that each party should
 plead his case with the most strength against himself - as in case of an ambiguous expression
 In pleading traversable facts it is always ne-
 cessary for the party pleading to allege the time & place
 of the transaction - the time that the other party
 may traverse ~~the~~ ^{the} date. - The place, saying
 that the venue may be changed provided the action
 be not brought in the right County - The omission of
 place is however more matter of form in trans-
 action actions - In England they have a curious
 method of evading this rule so that now a tran-
 sition action may be brought in any County in
 England by resorting to fictitious names - as if a
 contract had been made in New York - in an action
 on the contract they will decide the transaction
 as having taken place in New York - one of the United
 States of North America - viz at the Parish of Mar-
 leboro & in the Ward of Phench. In all actions for
 things sold it is necessary to aver the number quan-
 tity and the price. But it is never necessary to
 state them truly - but as they are in fact unless
 where a mistake will work a variance. In in-
 all actions on contracts the terms of the con-
 tract must be stated precisely as they are expressed
 in the contract for the delivery see book 4 250

Non. & pleadings - it can not be averred that in the Deft
 questions promised & delivered by Deft. in the Deft. in the
 Law 60 evidence here will not support the plea & Declaration
 Cray. Surplusage in declaration or plea will not be
 349 late the pleading but it is otherwise with respect to
 Deft. answer. It is said that every thing in a plea must
 642 be pleaded according to its legal operation - & if
 Corp. circumstances never to sue another it must be sive
 500 and a release or if one covenant in a lease is broken
 1 Inst. it must be pleaded as a surrender. It is said however
 103200 by Wilson that it may be pleaded as it is in fact the
 Month. then is the true rule that the plea may be pleaded accor-
 11 ding to its operation in law yet it may also be plea-
 & pleaded according to the matter of fact. That which a
 15 Inst. already appears upon record need not be averred.
 10324th as if the Plaintiff confesses any fact in his pleading
 10324th it is unnecessary & nugatory for the Deft. to deny it.
 11325th all circumstances necessarily implied in the
 2 Inst. facts averred need not be specifically alleged
 Law 48 What is admitted by the two parties cannot be
 10325th contradicted by one party, nor even by the jury for
 4 Inst. it is the sole province of the jury to decide upon the
 2. Mod. 5 point in issue between the parties. It is a general rule
 10325th 289th not an universal one - that each party is bound to
 10325th 40 prove no other than material averments - but when
 236 1102 proof of material facts would make a variance with
 2 Inst. 207 an immaterial averment - as if one declares upon
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a note of some date being the being - Here S. F. Richardson
written on paper & with an instrument on the back - and
it - & when it being, produced in court it has on
no instrument on the back the declaration will. & the
It is never required to prove an important
avowment as that the Defendant were a white hat & one
or narrow boots. If the declaration implies and the
same more it is added to the answer by the
pleading - and if one omits a point when re- 608
plying - it is cured by pleading over - and no ad- 609
vantage can be taken if it could be special removers 610
the principle upon which this defect in form is 611
cured - is that it is a waiver - the adverse party is 612
deemed to waive any exceptions to the form of the 613
pleading. If the pleading is materially defective 614
or omits a material fact - it is added by the adverse 615
party answering the suit is & a plea in bar - and 616
what is omitted in the declaration - it is sufficient 617
& judgment cannot be arrested on this omission as 618
long as it appears upon the face of the record - thus 619
where the 1st declared that the defendant took a 620
certain book (Grandam's name) & omitted to aver 621
that this book belonged to the Plaintiff it was added 622
so that the defendant pleaded in his plea in bar that 623
that although the 1st did take away the Plaintiff's 624
book &c. & that the want in the Declaration was cured & 625
there matters - & that a plea in bar could be to the

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how the pleadings can be carried further. Pleas & Findings
 than the evidence - When I was a student in
 in my judge's office I tried to use, of course
 to satisfy but found I could not. - In every one
 active stage of the pleadings - the Reader on each side
 must support or justify what he has before attacked.
 If an action is brought on contract or for a debt and
 Debtors - the Deft pleads a release - The Plt in his
 replication avers that the release was obtained by
 fraud - here the defendant must deny it or put
 in a special demurrer. The judgment of the Court will
 is rendered upon the whole record so that he who
 upon the face of the record makes the first error 190
 will be defeated. The judgment is to be given first 120th
 upon the facts in pleading - & second upon the 155th
 merits of the question - He who commits the first error
 in pleading must have judgment signed 110
 against him or if the plea is the defendant's he wins. 100th
 loss - Yet the deft will have judgment if the Declaration 170
 is materially defective - And if the Declaration
 is good & the plea good for nothing - the Plt must
 have judgment the in replication is materially de-
 fective - the language of the Plt would be in the last
 case my replication the bad is good enough or your plea
 or in case the declaration & plea are both the Deft
 may say my plea is good enough or your declaration
 thus much for the general rules of pleading - as to the competent

Declaration. The most common and important rule
 100 concerning the declaration is that it must state
 110 all that is material to the right of action.
 120 And the declaration must contain the whole founda-
 130 tion of the Plff's claim - or otherwise the Def. can
 140 not know how or what to answer - neither will
 150 he have opportunity to disprove the material facts
 160 on which the action is grounded. On the other hand
 170 if the declaration alleges any facts which show
 180 that the Plaintiff has no right of action - or which con-
 190 stitute a decisive defence, for the defendant the Plff.
 200 cannot recover, for it is not material whether the
 210 ground of defence is shown by the defendant or the
 220 Plaintiff. - As if in debt on bond the word "with the word"
 230 be before the time of payment had arrived - or if it is
 240 a rule in law that no person can bring an action &
 250 recover upon it - till after the day on which the
 260 payment became due - except when a party binds
 270 by contract to perform some future act or performance
 280 at some future time - or to some act in the meantime
 290 to discharge himself from performing his contract - in
 300 such cases he may be sued immediately - as where
 310 one makes a contract or covenant to convey land
 320 to another - six months hence - but before that time
 330 conveys it to a third - or if a lease covenants to leave
 340 service of the trees or timber growing - at the end of the term
 350 & instead of cutting them down some are used in making

The omission of one then in the Pick & Piccolino's
 declaration which constitutes the gist of the ac-
 tion is inessential - but what is meant by gist?
 It is the single non-^{without} fact, which there is necessary
 to action. - and where there are several facts so-
 me to the gist of the action the omission of the other
 will be fatal - as if in an action in contract with the
 precedent act of performance on the part of the other
 he omit to aver his own performance. - So in an action
 for damages done to the owner or ship by the Defendant
 the scienter of the Defendant is admitted that the owner
 knew the dog was accustomed to do such mischief. In
 such case the defect is ~~not~~ material, & immaterial
 and it will be good ground for an arrest of judgment
 for only the Defendant knew that the dog was accustomed
 to do such mischief he is not liable. Matters of induc-
 ement or aggravation never constitute the gist of an
 action. The inducement is that with which the
 principle matter of fact or ground of action is intro-
 duced for the purpose of elucidating and explaining it
 these matters of fact constituting the ground of the ac-
 tion which follow. The object of the aggravation is
 to show under what circumstances a hardship
 arose to the action & the injury was committed. Nei-
 ther the inducement nor aggravation require the
 same strictness of form or description as that which
 constitutes the ground of the action. In all actions

Declaration - the declaration must contain what is estab-
 lished certainly. Certainty is as to parties time place
 and a point-matter - all which must be stated ~~with~~
 distinctly and with certainty. It has been decided
 that the word said is ~~not~~ not sufficiently cer-
 tain when there are two antecedent subjects from
 which it refers - as where two counties were men-
 tioned in the declaration before and the Plaintiff at-
 tacked one of them & it was held to be ill for
 taking it in one & another which County he meant. So when
 one John Locke was indicted for breaking a house
 and another John Locke was mentioned in the
 declaration & frequently - the Plaintiff having
 afterwards used the words said John Locke - it was
 held to be ill on account of the uncertainty. The Pl^{ff}
 should have said John Locke first aforesaid or J. L.
 last aforesaid - & the County first aforesaid or the
 County last aforesaid. The rule as to certainty of the
 subject-matter has been of late years much relaxed
 I cannot say Mr. Gould reconcile all the cases to
 be found on this subject - there are some which seem
 inconsistent with each other. But as the law stands
 now the general rule is that where an action of
 trespass or any other action the subject of which
 is the real estate & damages only sought. If the
 declaration be such that there can be no reasonable
 apprehension of the meaning of the words used is

¹⁰⁰ Declaration - The law never requires a certain
101 description of the nature of the thing
102 will admit. Matters of mere aggravation need
103 not be particularly or with certainty described
104 therefore where in an indictment for burglary
105 it is stated that the prisoner broke open the door
106 and spoiled or stole divers goods, &c it was sufficient
107 because the gist of the action is the breaking open
108 the house - A general description of matters of
109 aggravation in a indictment is sufficient. But it is
110 otherwise in a civil action of trespass for breaking
111 open & entering a house - because as Lord Mansfield
112 says the defendant cannot plead until the writ is
113 returned - and as is said in Lord Raymoud the
114 return cannot be pleaded in bar of another action
115 brought by the same defendant. But the true reason
116 why certainty of description of the subject matter is
117 necessary is that the Defendant may discover the
118 true cause or ground of action and adapt his defence
119 &c accordingly. If the declaration contains several
120 several subject matters some of which are sufficiently
121 certain and others not the declaration will be
122 good as to the certain or well described subject matter
123 and the Plaintiff may have judgment - as in Treason
124 where the declaration is for the commission of a horse - silver
125 plate and divers other articles - here if the Plaintiff demands for
126 the uncertainty of the declaration judgment will go against the

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Where one breach of covenant is a Pleas & Pleadings
signed well and another ill. - the Aff will have judg-
ment. - Where there is a defect in the declaration 4 How
advantage cannot be taken of it by a plea in de- 80
batement except in case of misnomer and variance 200
in the declaration from the writ. A demurrer is in 110-120
general the proper mode of attacking the declaration.

In all cases where a contract is not good at l. l. 60 l. l.
without it be in writing - this contract must be a- 38
voided to be in writing. - as an indenture of apprenticeship 1100
~~if~~ if the contract is otherwise declared on common 540
to the com. law but created by statute & requires to be 1000
in writing by this statute it is ~~not~~ necessary to aver 200
it to be in writing. - as in declaring upon or placing 1000
orderise. - but in declaring upon a contract known law. 60
at com. law & good at com. law. without writing need
not be averred to be in writing. even the required to
be in writing by statute. - as in declaring upon a
contract where one has by writing bound himself
to pay the debt of another. - For such a contract is
good at com. law without writing yet by the stat. 1000
transferred to the com. law was declared to be void under infor-
tune. - For this stat. did not introduce a new rule
of pleading but only a new rule of evidence. So it
may be necessary in a plea in bar to show or aver an in-
dividual to be in writing. - In declaring upon a
deed or written contract the Aff is not bound to set forth

Declaration - and more so if there is necessity to
 entitle the other to a right of recovery. If the pro-
 viso - or qualification be embodied with ^{the} contract
 declared on - as if in a lease the Lessor covenants to
 give quiet enjoyment, provided he pay so much
 it must all be set forth in the Declaration. But if it
 were thus - and the Lessor covenants to give quiet en-
 joyment and the Lessee to pay so much rent - here
 it is unnecessary to state the proviso or qualification
 so in declaring upon covenants where one part
 does not necessarily enter into the description
 of the other there is no need of stating the whole cov.
 The rule of law seems to be that where from the facts
 stated the law will imply a contract - it is sufficient
 since the terms of that contract are not expressly laid
 in addition to this the Plaintiff must in all actions
 that require a promise on the part of the
 Defendant to pay the sum stated in the contract be-
 cause the promise in this action is the gist of it.
 All declarations ^{in debt} are either general or special
 the words general & special of themselves sufficiently
 denote their meaning. Thus indebit. ass. is general
 & ^{the action} may be special upon the same cause of action
 as special ass. or in other words the action on the case.
 Thus also an action of debt on the bond part
 the bond is ^{general} ~~general~~ but if the Declaration recites the
 condition of the bond then it is a special declaration

103
is in an action of Ejectment the Aff-Pleas & Recitations
if the pleaser may show how his title accrued. This
will be a special declaration in Ejectment. & a gen-
eral declaration cannot be demurred to by the Deft.
unless for some defect in the form (ie) the Defendant
cannot put in a general demurrer - but must join
the gen. issue or a special plea in bar.

As to the Joinder of Parties in the same declaration & lok.
the true theory seems not to have been explained 18th 10th
in any of the Books. The general rule on this sub-stand-
ard is that where two or more persons are jointly 291st
interested in a certain right they not only may 153
but ought to join in an action for the violation 53th.
of that right; and this whether the action sounds 651
in contract or tort - Joint-Tenants, Joint-Debtors, Co. E.
or tenants in common - have a joint interest, for 148
this purpose - co-executors must also be joined with 1 Leon.
even if one of them refuses to act or join in the suit but 375
by process of summons and severance after the suit is com-
menced his name may be struck out by the Court. 15
In case of non joinder of all the Affs advantage is to be
taken of it under the gen. issue or by ^{aff} demurrer 291st
if the action is founded on contract - but if the action is
founded in tort advantage is to be taken by plea
in abatement. When a stranger is made co-plaintiff & lok.
it is reasonable that the defendant should not be bound
to make answer to him & of course to more of them.

Declaration - But there are cases where the nature
 of the action will not admit of a declaration in the
 name of two - as the right of personal liberty or
 security - If one speaks slanderous words of two other
 persons - as calling them thieves or if an assault &
 battery be committed against two by one person; in
 neither of these cases can there be two plaintiffs in one
 action for damages - yet the husband may join with
 the wife in action for an assault & battery committed
 on her. ^{the husband} as to the joinder of Defendants in an action
 if the cause of action arises from the joint act of
 two or more persons they may be joined as defendants
 in the same declaration where the action sounds in tort
 But if two or more persons at the same time and place
 use the same slanderous words they may not be join-
 ed in the same action - for no tort is here supposed - the
 cause of action does not arise ex delicto - nor is the
 damage alleged to be done with force & arms - the
 general rule being that where the law supposes a tort
 or force - then two or more defendants may be joined
 If two or more persons join in committing a trespass
 or battery - they may be joined as defendants in the
 action - So if two or more join in a malicious pro-
 secution - or in publishing a libel - they may be joined
 as defendants because in both cases the act com-
 plained of is alleged to have been committed with
 force & arms. - But it is otherwise in Slander.

Two or more persons can never be Placis & Obligations
joined as defendants in one declaration for dis-
tinct torts done separately. - In the case of con-
tracts if there are two or more obligees and one
dies - his executor cannot at law in any case sue
alone upon this contract - nor can he join in the ac-
tion with the survivor but the sole right of action
survives to the surviving co-obligee. If two or more
bind themselves in a joint contract they must all
be joined as defendants in an action on that contract.
But if two or more bind themselves jointly and
severally in a contract - they may all be joined as
defendants or one of them may be sued alone at
the election of the obligee. but if more than one be
sued the co-obligors must all be joined as defendants
if there be three or more obligors - the plaintiff cannot
bring his action against two - but he may choose one
or take the whole. If two or more persons bind them-
selves by one contract it is to be considered a joint
contract of course unless the terms of it import a
several one. The word "severally" need not be used to
create a severally contract - but other words to that
amount. - If two persons bind themselves jointly
~~severally~~ and one of them dies his executor jointly
cannot be joined as co-defendant with the survivor in an
action on that contract - for as in the case the whole
right of action survives to the surviving obligee so in this

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184th

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8 Bac.

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14th

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5th

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14th

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24th

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14th

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Declaration - the whole liability survives to the sur-
 50. viving officer. But if two persons find themselves
 51. jointly, co-executors and one die his executor
 52. may be sued alone - or the survivors can sue but
 53. the executor cannot be joined in a suit with
 54. the survivors. I mentioned yesterday *saunders v. Wood*
 55. that tho a co-executor refuse to act or join a suit
 56. he must notwithstanding be joined with the others
 57. as *Wells & Co. v. Proc.* of summons & service have
 58. his name struck out of the court - so also in ac-
 59. tions against co-executors - they may all be joined
 60. as debtors but the action may be brought only against
 61. those who act as executors or who have administered
 62. for the *Wt* is not supposed to know how many ex-
 63. ecutors there are unless they all administered.

As to which causes of action may be joined in one declara-
 64. tion the general rule is that several causes of
 65. action being of the same nature may be joined between the
 66. same parties may be joined in one declaration - this
 67. is the general rule but to understand what is meant by
 68. causes of action of the same nature the following
 69. particular rules must be noticed. It may be laid
 70. down as a general rule tho it is not universally
 71. true that whenever two or more causes of action
 72. will admit of the same kind of judgment they
 73. may be joined in one and the same declaration -
 74. judgments ^{in judgment} so called are of two kinds viz

197
A Captian & a Misericordia - the former Pleas & Pleurings
of which is the judgment in all cases where the
injury complained of is alleged to be done with
force and arms - and (what is now obsolete) the
Defendant in consequence ~~is liable~~ until he pay
a fine for the public misdemeanor which is sup-
posed to be coupled with the private injury. Judg-
ment of Misericordia is where the injury is not al-
leged to be done with force and arms - and the Debt
in case he loses his action is a merced (ie) in the
mercy of the King - In his wife's delay of justice by
not rendering the Offr his due - in this case his body
is not liable to be taken for the same cause as before. 11
According to the general rule then as before stated. 12
whenever two or more causes of action will admit 24
of the same kind of judgment - (ie) either both a cap 30
iatum or both a misericordia - they may be joined 101
in one and the same declaration - but when one ^{cause} ac 102
tion must necessarily receive a judgment of a cap. 50
iatum and the other a misericordia - they can nev- 241
er be joined in the same declaration. There there 30
fore are said to be causes of action of the same nature 101
requiring the same kind of judgment. This rule 252
however is not universally true - there are some ex- 102
ceptions. But if the several causes of action they all 50
require the same kind of judgment and admit of
the same general issue, it is universally true that

The reason why different causes of Action & Pleadings
action may not be joined in the same declaration is
is because it would produce confusion and other 366
inconveniences in pleading. Trespass on the case in fact
and trespass vi et armis cannot be joined even tho 255
the former arises ex delicto - because the judgments & the
are different - Neither can trespass on the case 58
ex delicto be joined with action on contract be- 240
cause the judgments are of the same genus 114
are different - not guilty in one and on assumption 240
in the other - Debt & account can never be joined. the 819
action of account is altogether sui generis - the gen-
us is different from that of any other action - the 466
proceedings in trial also are entirely different. 11
The issue in fact is first tried by the jury but final 166
judgment is not given till it is given upon the report 21
of the officials. - There seems to be some old sub- 1140
stantial reasons why account cannot be joined with
any other species of action. - There then are the gen-
eral rule viz 1st That in all actions where the judgment
and the pleas are alike distinct matters arising
under the same action may in all cases be joined in
one declaration. ~~But~~ where the judgments are dif-
ferent and a fortiori where the judgments and issues
are different distinct causes of actions can never
be joined. The misjoinder of different and distinct
causes of action is an incurable fault. The Debt

Declaration - was deemed to it specially in covering
 a writ of judgment. It is here necessary to say
 that it is to point out the distinction between the ma-
 jorities of action and simplicity - which instead
 of it ever having been sufficiently explained by
 law-writers has been by them and by nine lawyers
 out of ten confounded. Duplication consists in joining
 incongruous ~~answers~~ ^{matters} for the purpose of enforcing
 one single right of recovery. And a ~~single~~ ^{single} action
 consists in joining in one declaration two or
 more distinct causes of action to enforce different
 rights of recovery - or in joining several actions that
 cannot be joined. Duplication is only a formal defect
 and may be cured or aided by pleading over or by a
 verdict - but a ~~duplication~~ ^{joinder} of actions is an incurable
 defect. Suppose one joins debt on bond and assumpsit
 in the same declaration. Batter cannot in any
 manner be supposed to come in aid of or enforce the
 right of recovery on the bond - and it strikes one
 immediately that this never could have been the ob-
 ject of the 4th in joining Batter with debt on bond.
 But suppose one lets his horse to another to be returned
 at such a time - and upon neglect of return an action
 is brought for damages for the unlawful detainer -
 the 4th also states in his declaration that the Barlee
 is his - the horse - a horse & wounded him & this is
 a ~~joinder~~ ^{joinder} of actions - but it is not a ~~joinder~~ ^{joinder}.

it is only the difficulty, reversible by verdict. *Reas & Readings*
Shew that in the case of trespass, the action is not a real
one, and cannot be joined with a real one. *100*
The plea, for breaking open a house, and burning goods, *101*
being the same, and the action being the same, *102*
being one continued act of trespass, may be joined in one
one declaration, tho the breaking the house is one
in itself, & the burning the goods is another, in *103*
damages as well as tort. I should say (say the Court) *104*
that there would be no need of saying the breaking of the
house is a trespass - but consider that as an ac- *105*
gratation of the trespass in entering the house. When *106*
several actions are brought for several things of the
same nature - the parties in these actions being the *107*
same the court may at their discretion compel *108*
a consolidation - But if an affidavit is put in, com- *109*
mitting that the causes of action are different *110*
or that they will appear different on trial the court *111*
will ^{not} compel a consolidation of them. *112-118*

The declaration should always agree with the *113*
writ - so the writ is the foundation of all the pro- *114*
ceedings. if therefore the action is entitled trespass, *115*
in the writ - and trespass on the case or contract *116*
in the declaration it is a fatal variance. The de- *117*
claration should always pursue the writ. If the *118*
right of action could not agree with a con- *119*
tract action brought on the case or contract, *120-125*

Declaration he must show performance in his ac-
 760th tion & the omission of ^{the} ~~his~~ covenant is an
 765th essential defect - because it goes to the gist of the
 770th declaration - But where the condition is the gist of
 775th the declaration it is not required he is not bound to shew
 780th performance of it. This is matter of defence for the defend-
 785th ant to plead - as if it may be the case it is enough
 790th as matter of defence for him. & if there are more
 795th contract reciprocal covenants & independent
 800th covenants or promises - the 1st need not aver nor
 805th plead performance on his part - But if the covenants
 810th & promises are reciprocal or dependent then
 815th performance on the part of the 1st must be averred
 820th & pleaded. If in the agreement it is stipulated that an act
 825th should be done in consideration of the performance
 830th of some other act on the part of the Plaintiff. This
 835th would be a condition precedent to the Plaintiff's
 840th right of action and of course must be alleged & proved
 845th before he can sue. But if one agrees to perform
 850th or do an act in consideration of another's covenant
 855th or agreement to another act - performance need
 860th not be alleged in a suit by either party. The coven-
 865th ant here could not set the performance in the consid-
 870th eration & therefore the ground of action existed
 875th before performance. But if one covenants to do
 880th an act in consideration of another's performing
 885th what he has covenanted to do - the covenants are independent.

those facts which constitute the Pleas & Pleadings
is a substance & the action must be correctly stated
and positively alleged and not by way of recital -
as to declare them. Whereas the 2^d of the 2^d Sec.
formerly, such a way of declaring for and against
that were not curable by verdict - but now it is otherwise
and it is even doubtful whether such plead-
ing is binding, except ^{as to be reached} ~~as to be reached~~ by special demurrer. 2^d
This rule does not hold as to facts not triable by
jury however essential they are - thus the con-
sideration in a contract, or property in trespass &c
science in certain cases - these need not be directly
and positively alleged - but may be introduced by
the word whereas. In this regard will always be
sufficient to introduce mere matters of circumstance
In a. Whereas the 2^d became indistinct, is sufficient in the
consideration in a. cannot be recovered. It is in
trespass whereas the 2^d was in possession he is sufficient too.
possession is the gist of the action. If the Declaration
is good in part and bad or ill in part the Deft
cannot demur to it unless he puts in a special plea
in avoidance of the good part - thus if the 2^d was
upon two bonds in the same action and it appears
that one is not yet due or is void - the declaration
is not demurrable but in case a general verdict
is given it will be sufficient ground for an error
of judgment. This it will be found is not contrary

Jurisdiction to the general rule in pleading & to claim
 Union defect in the pleading which will not amount to a motion
 in arrest of judgment will be reached by a gen-
 eral demurrer. I have found myself puzzled that
 this distinction has been a cause of some difficulty
 with students they have not seemed to comprehend
 as the true rule. It should be remembered however
 that this is not in strictly a defect in the declara-
 tion but a defect in the verdict - it is the fault of the
 jury. If an action be brought for cutting the throat
 this is a lie & a distinct count in each. The Deft
 cannot demur to the declaration for if he does he will
 be defeated for the cutting one a lie is actionable
 tho to call one a lie is not. ~~now the Deft has a right to~~
~~the declaration and the plaintiff is not bound to~~
~~add a count for the damages in the case - where~~
 one count is good and another bad or doubtful - or in all
 cases where there are two or more distinct counts the
 jury should apportion the damages separately - then judg-
 ment is to be given only for the good. According to the
 true spirit of the rule if the court can from the ve-
 rdict and verdict discover what the jury intended
 to give for each count the court will ex officio strike
 out that which is given for the bad and give judg-
 ment for that only which is good. If the jury ap-
 portion damages than the Deft demands this is
 an erroneous apportionment of damages but does not

Let the declaration be 4th mo. New & sometimes
release the burden of judgment may be correct & 8th.
or in case judgment is in favor of the defendant it will
be good measure for bill of exceptions & reversal of what
the judgment. So the rule is the same of the 14th. 185
demands more than a bill of exceptions in an in-
talitied and the judge in all his decisions & the 4th & 5th
in new case ought to remit the error. It will not 2th
however be sufficient cause of error. 10th. Formal defects
in a declaration may be waived by the court
deemed allowing over it by admitting to take out a bill of
exceptions of it in an, leading. But defects in sub 6 & 5
stance may be taken advantage of at any time by
the defendant.

Having considered these parts of the proceedings
in a suit which consist of the writ and declara-
tion says Mr. Justice Sprague according to the meth-
od proposed at first to consider the pleading which
follow the declaration consisting first of Dilatory
pleas. . . . Dilatory Pleas are so called
because they were formerly used merely for the pur-
pose of delaying the trial. But by the 4th. 185
4th 85 Ann. it was enacted that no dilatory plea
should be admitted unless an affidavit be produced
showing some cause or ground to induce the court
to believe such plea was necessary. The 10th. we have
no such Stat. (this Stat. not being obligatory more)

209 Dilatory Pleas. Another name we may now give is called
Dilatory. For if the defendant pleads a lame plea it can be of
no manner of use to him but on the contrary a clear
advantage. And that requires all dilatory pleas to
be tried the first time or session and in the court or
term where they before the sitting & the court continues
down next after the last day of the session.

Dilatory Pleas are usually divided into 2 kinds
impugning the Jurisdiction & plea to the disability of
the Plaintiff &c. Pleas in Abatement. I don't know any
Mr. Gould that this division is strictly logical but
as it is a simple one & accords with Tradition & has
been adopted it. — II Pleas to the Jurisdiction.

11 It is a good cause of exception to the jurisdiction
12 because that the cause of action arose out of the local limits
5 or jurisdiction of the court. We in this State have
13 different courts of strictly local limits or limited juris-
501 diction except our courts. Our Justices of the Peace
14 can try & determine actions wherever they arise
544 but they cannot go out of their respective Counties
to determine causes nor can any of the Judges
of the Superior Court while sitting in one County
go into another and decide causes — In the same
manner Justices of the Peace being considered equal
ways in position in their own Counties cannot go
into another and hear causes. So that they are not
strictly speaking of a limited jurisdiction.

201
a second cause of exception to the jurisdiction & Pleas is
jurisdiction relates to some privilege of the deft

This is sometimes called a plea to the disability of
the defendant. - Thus the attorney of one court is
not liable in an action brought before another court.

He is privileged from being sued in any other court
than that of which he is an officer. No such privi-
lege as this exists in this state; for an attorney ^{at}
Com. Law is an attorney of all courts of Com. Law

But even in England an attorney is not privileged 4 Bee.
in such direct as it is called but only in his own right 36-7
thus if an attorney is an executor he may be sued 60. P.
as executor in any court of competent jurisdiction 585
in the subject-matter - So if an attorney is sued at law
any other not being an officer of court his privilege 2
is lost and is liable to be sued in the common be- 60b.
fore any court having cognizance of the matter. 171

Another ground of exception to the jurisdiction to
the jurisdiction is the not having cognizance of 41a
the subject-matter - thus if the court of Com. Pleas 35
should condemn a man & have him executed the judges 100k
& sheriff who executed him would all be guilty of murder 68
so if a real action be brought originally before 12ent.
the court of Kings Bench (113.) for this court has no 556
cognizance of matters respecting the title of land
in where the title to land is in dispute the proce-
ding would all be void some may be set aside by

Dilation pleas - any court having competent jurisdic-
 tion. So that the deft. being a common man, justice need
 not plead to the jurisdiction. When the Deft. may
 plead his privilege or except to the jurisdiction on
 account of the cause of actions arising out of the
 local limits he may waive this ^{privilege} by pleading
 over - but when the subject matter is not cognizable
 the judgment will be erroneous. Anciently it was
 a sufficient exception to the jurisdiction if the cause
 of action arose without the county. but now it is no
 longer an exception to the jurisdiction of the court in transitory
 actions that the cause of action arose in a foreign
 country the ancient rule is adhered to by a fic-
 tion as before mentioned in the *Smith v. Mar* is longer the
 defect of the ancient in the word of escape. Actions
 are said to be local where the judgment is in re-
 spect to Ejectment. Penal laws are also local - It is there-
 fore a good exception to the jurisdiction that the offence
 complained of was committed in a foreign country
 Pleas to the jurisdiction are regularly the first on
 the part of the deft. in the case of pleading. For any
 exception to the jurisdiction of the court except as above
 mentioned is presumed to be waived by any other plea
 entered all pleas to the jurisdiction must according to the
 rule be signed by the defendant - But all other
 pleas are signed by the counsel for him as in heads - It
 is supposed then when a plea is made by counsel

they obtain leave of the court to plead. Pleas & Pleading
 but because it is thought improper to obtain leave
 of the court to question their authority or jurisdiction - the defendant himself without such leave
 is supposed to plead. In Connecticut we do not con-
 form to this rule. The attorney signs all the pleas
 whether to the jurisdiction or of any other kind. 3 Blom

This plea concludes to the court by saying whether
 or the court will have further cognizance of the sub-
 mit. - In Connecticut where the Deft puts in a Mch. 208
 to the jurisdiction and it prevails or is adjudged suf-
 ficient costs are awarded to the defendant but where 100
 the court ex officio deny their own jurisdiction as 4 Bac.

or may do no cost are awarded - This says Mr. Gould seems to
 be departing from the general rule that Courts can
 not judge where they have no jurisdiction. Cost must
 be awarded say some to prevent the Deft from bringing
 his action for malicious prosecution - but says Mr. Gould
 I do not see why this should prevent a suit at all
 provided the p^{ty} before he brought his action knew
 that the court had not competent jurisdiction

as to Pleas to the disability of the Plaintiff
 the grounds or causes are somewhat various 11 Bro 2
 Outlawry is a good plea to bar the p^{ty} of an 42 Co 35
 right of action. we have no such thing as outlawry here
 in Conn. - but in England the have - Outlawry 102-5
 prevent one from pursuing one legal remedy &

Disability, &c. - It does not create or destroy the writ
 but is only a temporary suspension of the writ
 or a temporary impediment to the plaintiff's right of
 recovery - until the outlawry is reversed. Where
 the outlawry accrued after the writ was served the
 defendant must after reversal of the outlawry plead idem
 same writ. This disability extends only to those who
 are in their own right not to those who are in another's
 writ (another right) thus if an executor is named
 law he may sue in any action respecting the assets
 of the testator. In an action by an executor the out-
 lawry of the deceased may be pleaded in the dis-
 ability goes to the person whose right is to be enforced
 in the action and the executor in this respect repre-
 sents the testator. The outlawry may be used as well
 against any other person because the disability is in-
 tended to deprive him of the means of enforcing
 his civil right and not to screen him from the op-
 eration of the law. The law will protect an outlaw
 against those acts which would be crimes if com-
 mitted against another. - Here however the protec-
 tion is not secured to the outlaw himself but to
 the Attorney General. This disability is always plead-
 able in a dilatory plea - and sometimes in a plea in
 bar. For if the cause of action be assigned then the
 defendant may be taken out by a plea in bar - as if the
 action were concerning his own goods & chattels which had

311
previously been forfeited by some Pleas & Proceedings
felonious act. This then is the criterion to deter- 152
mine when the disability may be pleaded in bar 14
of the ordinary, was occasioned by a crime which 5 Bac
amounts to felony and which of course causes a for- 761
feiture of all his goods and chattels - here in any 510
action concerning those goods and chattels the 100
ordinary may be pleaded in bar - but where the cause, - 106
of action is not forfeited - as in assault & battery the 29
disability of the Plaintiff must be taken advantage of 180
in a dilatory plea. - another ground of taking 20-128
advantage of the disability - is Recommendation 1300
this being applicable to none of the states in the Union. 29
it is only necessary to mention it. of these causes 29
of exception to the disability is alienage. this in 100
foreign 100
but not in alienage is pleadable as a disability. 171
alien even though he belongs to a friendly power if not nat- 310
uralized nor made a citizen can maintain no 384
action either real or mixed - but may maintain any 100
personal transitory action. & the reason why an 210
alien cannot maintain a real or mixed action is 616
because by the policy of the English law they are in-
capable of holding land - real actions are always
where the title of land is in dispute. There is a str- Kirby
ange case reported in Kirby - and which is clearly 413
not law - where the court refused in case of a con-
tract entered into in a foreign country to interfere

Dilatatory Pleas. - can alien enemy immunities be
 held as a shield against real mixed purposes
 He can hardly be in a position to maintain one
 15th. Prisoners at war are not entirely accepted to the
 108th. They are not a little liable to be made in the law
 110th. with respect to a subject in the law - not in a
 12th. and appears as a necessary part of the law of the land
 6th. an enemy may have a ^{alien} maintenance and
 108th. on a ransom bill - This is the case of military and
 Done. it is recognized by the municipal law - It therefore
 6th. a ransom bill be taken care of in or be by
 108th. accident destroyed he may maintain an action on
 a ^{the} contract for his ransom - the same as others
 108th. would do in written contract - he may also have a
 108th. also one residing under a license - protection or
 4th. safe conduct may make him some action for he is
 8th. not quod al hoc in alien enemy - It thus cannot
 108th. be made a shield against a contract made between
 the ~~alien~~ enemy during a treaty of peace - Since or
 108th. temporary suspensions of arms may also be entered
 108th. into. But whether an alien enemy may maintain
 8th. an action in right of another - as executor
 108th. has been doubted - and it remains not settled
 108th. I should say myself that he ought to be pro-
 6th. hibited from bringing actions ^{the law} ~~in right~~ as executor
 as well as prohibited from being an executor - and
 that he ought not to be an executor - he can sue as a

an action, friend man in the character of Pleas & Pleadings
of an executor hold leases but cannot sue in his own
name. Besides these there are various other cases Cro. C.
of people who are disabled from bringing action 5-8
on their accounts then under a premise & 12ac
disability of the executor Solong. To all these the 81
disability in England plead their disability but station
each class of people not being known to the law 801
almost in all the states the rule does not apply 1001
to the contrary. Another ground of pleading, 244
the disability of the Wife is coverture. When a 354
feme covert sues alone the death may plead 331
her coverture - except where the husband is civ. 24ac
illiter maritus (as he has been banished &c.). She has 105
bond must in all civil actions write. 244 ac 507
where the subject matter relates to the wife. except in 321
those cases where the husband may bring his action alone
alone. But if the death arrives his plea to his disability 61
& judgment be rendered for the feme covert wrong alone with
it is no cause of error - Her disability is pleadable 766
only in a dilatory plea or as Lord Kenyon says in 1301
after in a statement. In this matter you will find 3. 6
loving is clearly incorrect so he should not be 48ac
plea to the disability with a plea in abatement - 82
but it differs from a plea in abatement proper. 360
so called inasmuch as the former is relative to the 303
person of the Wife, proving incapacity of the said of

245
more exact here but it is universal. Thus & frequently
one that every plea going up to the court
is a plea in abatement. In some few instances there
is a defect in the declaration is to be taken advantage of
by a plea in abatement as in case of misnomer & omission
in the declaration - and also variance in the facts set
forth in the writ. In this state variance between
the instrument counted upon and the descrip-
tion of that instrument in the declaration may
be taken advantage of by a plea in abatement.
And in Eng. such variance is taken advantage of
on trial by objecting to the evidence furnished by
the instrument - As the clerk may prove a copy of
the instrument - spread it upon the record and
deem it to it - The former is the best and safest
way & the most frequently done. In a Connecticut
lawyer it will be necessary to make some explana-
tion of the writ here used. The writ in this state
consists of that part which precedes the statement
of the facts & of the cause of action - The declaration
consists of the statement of the cause of action &
commences with the word whereupon. The date of
the instrument is common to the writ and decla-
ration. The date signature of the clerk of court or
justice of the peace - & the certificate of duly paid all
proper fees & the writ - and the omission of either
is sufficient cause of abatement. In all pleas in

Dilatory Pleas - in abatement the greatest precision and accuracy is necessary. They are odious to courts therefore they will discourage their being used often. The least inaccurate is fatal - the utmost certainty is required. Lord Coke whose collatic descriptions on this point are so technical and obscure that no one has been able to give a satisfactory explanation to all them - & many have said that nothing is to be understood from them - speaks of a kind of certainty viz a certainty to a ~~general~~ ^{common} intent - a certainty to a ~~common~~ ^{in general} intent, & ~~certainty~~ a certainty of intent in every particular as to causes of abatement they may be either intrinsic or extrinsic. Intrinsic are such as appear upon the face of the writ or declaration - as variance in the name - or date - Extrinsic causes are such as do not appear upon the face of the writ or declaration such as a wrong name or wrong addition. One very strong general cause of abatement is the admission of the defendant - and that whether it be in the writ or declaration - & misnomer is in strictness the misnaming of the Defendant. But the omission of the def's addition is also reckoned a misnomer and as such is cause of abatement. The addition of a party is the description of a person by his name - his occupation &c. In England it is received that the title, rank estate or degree is no place - his name should be added to the Defendant - Thus

If an action is brought against a B. Baron & Knights
 it is not sufficient for some title or occupation
 must be expressed as Knight, Esquire, Merchant &c. &c.
 whether Knight, Blacksmith or the like - that by
 there may be no mistake of the person. The Com. Law
 did not require this addition except in certain cases. 106
 But the Stat. 1 Hen. 7. extended the rule to all persons & local
 actions appeals and indictments - but not to real 6.8
 actions - because the probability of a real estate would
 procure a probability of a mistake ~~because~~ the real 8.5
 estate must be particularly described. - admittes 8.5
 in the writ also is sufficient cause of action - 502
 ment as if Knight be inserted instead of Esquire 2d Hen.
 or vice versa. In Com. the only necessary addition 10.4
 is the name of a party except where one is sued in 4 Hen.
 an official capacity - or civil capacity - here the title 5.9
 or office must be annexed to his name. These ad- 2 Hen.
 ditions are sometimes called inducements to the 5.
 action. The addition in such cases is not to identify 1 Hen.
 the person but that he may know in what char. 501 -
 act he is sued, as heir executor &c. and he must 1 Hen. 3.
 in Eng. have the other addition besides. - So if the 5.5
 sheriff is sued he must be described as sheriff of 1 Hen.
 such in an official capacity where there is an 6.1
 addition by way of inducement - it is more certain
 age it is no harm - no cause - as if one be sued
 one be sued in trespass & decesses which - the cannot

1. *Plaintiff's Name* - be liable ⁱⁿ the law and the character of the
 abatement. It is an exception to the rule. Where one of two or more
 2. *Defendant's Name* is named or has a name addition - the other
 3. *Defendant's Name* cannot take advantage of it, pleading in
 4. *Defendant's Name* abatement. He alone who is misnamed can take
 5. *Defendant's Name* advantage of the error, and unless he does, pleading in
 6. *Defendant's Name* abatement he is presumed to waive the exception.
 7. *Defendant's Name* The same rules are applicable to indictments for
 8. *Defendant's Name* criminal offences. In case one of two or more
 9. *Defendant's Name* is misnamed it is a question yet unsettled by the courts
 10. *Defendant's Name* whether if this one pleads in abatement - the writ
 11. *Defendant's Name* is abated in toto - or only as to him - I should say
 12. *Defendant's Name* all courts hold if the cause of action is joint and
 13. *Defendant's Name* several it would abate the writ as to the whole - but if joint
 14. *Defendant's Name* and several then only as to the one misnamed
 15. *Defendant's Name* I do not say the why it must not necessarily abate
 16. *Defendant's Name* when the cause of action is joint - because then the
 17. *Defendant's Name* has no cause of action against part of those bound
 18. *Defendant's Name* in a joint contract - or who are jointly liable only.
 19. *Defendant's Name* But where the liability is joint & several (as when
 20. *Defendant's Name* one defendant may be made a surety upon the cause of
 21. *Defendant's Name* action or with others - at the election of the plaintiff the
 22. *Defendant's Name* suit may abate in toto or it may not, as to the sev-
 23. *Defendant's Name* eral and as to the joint liability. It is a general rule
 24. *Defendant's Name* that the defendant pleading in abatement must give
 25. *Defendant's Name* the plaintiff a better writ, i.e. must tell his true name
 26. *Defendant's Name* with the proper addition - he must point out what the

writ or declaration ought to contain. *Heas & Heredines*
 - how the plaintiff may be justified - It is not e-
 nough to show that his name is not John Stiles Finch
 but he must state what his true name is. If the 363
 deff is named by either of the names by which he 834
 was known it is sufficient. - It is not sufficient 515
 for the deff to say his name is John Stiles but he 1111
 must say that it was John Stiles at the time of 554
 coming out of the writ - & that he was known by that Lower
 name. If according to the rules of verbal criti- 57-03
 cism the deff in his plea in abatement admits 1116-
 that he is the person named in the writ - the writ 12.1109
 will not abate - yet he must always admit that 108-
 he is the person sued - He ought to say then in his plea 240
 And now Als who was sued by the name of Stiles comes into court and says. 40.1102
 A defence can ever be taken of a misnomer ex- 544
 cept by plea in abatement - & plea to the action is 536a
 a defence. A misnomer cannot be pleaded for error 234
 of the deff in his plea in abatement - & he may have 1111
 a rule that a man shall not a sign for error what 32
 he might have pleaded in abatement. 8.1111

It is said that if one executes a specialty by another 482
 name he must be sued in the name & his true 1111-80
 name come in under an alias. But says the Court that it
 is necessary that the right way is to sue in the right 1111-2
 name with a caveat that the deff executed the specialty
 instrument declared on by a different name - as some have at 128-536a-1111-1111-1111

Dilatory Means - This method is said by Lenthorn to be ad-
 vantageous in England. The writ should describe
 1. all the debtors by their proper names. It will not do
 216 therefore to the defendants by the general name of
 & Dr. partnership - It is not necessary to mention the
 228 Christian names of a company of merchants - as
 if one should declare against Benjamin Salmage
 and Co. this will not be sufficient but all the names
 244 each of the names of all the individuals in the company
 must be mentioned. But in a suit against a corpo-
 ration the individuals need not be mentioned. They
 must be sued as such being so constituted by law -
 the individuals are not supposed to be known. The
 Legislature in creating corporations expressly dele-
 gates to them power to sue & liability to be sued as such
 The mode generally practiced is to mention the
 names of the directors & have the ^{writ} served upon them
 but a suit merely against the directors or managing
 members of a corporation will not do - after men-
 tioning their names these words must be added
 and the rest of the company. for since they cannot be
 sued in their corporate capacity. The defendant
 258 need not take advantage of a misnomer for the sole
 purpose of securing himself from another action
 268 brought in his right name for the same cause of
 action - he need not fear that in judgment once ob-
 tained may be pleaded in bar of a second action for the

same cause with an government that Pleas & Proceedings
he is the same person sued in such previous action
by such name.

This name of the Off. may also be, altered in a Stat. 1 Com.
ment. The rule of the Com. Law acts as was of a 14
testament by ~~the name of the Off.~~ received an 1 Stat
alteration by the Stat. 1 Stat. as to the addition 5-12
of the Off's name. And before this Statute the rule
was the same with respect to the addition to 1 Com.
the Deft's name as it is now with respect to that 15
of the Plaintiff - And as addition thereto to the 1 Stat
Off's name are not ~~plea'd~~ ~~in a Statute~~ ~~except~~ 85
as at com law. & the law stands now with that in
as it used to stand with the Com. no addition to
the Off's name is necessary except his place of birth 1 Stat
- the title attached to the official capacity in which 145
he sues or which his degree be as high as a Knight. 170
at common law a prisoner held by indictment could 138
not plead misnomer in a Statute - being as it is in 1 Stat
present - but by Stat. 1 Stat. he may if he sues 104
plead misnomer in a Statute - but it is of course 1 Stat
for the court will not discharge the prisoner but 10
order the indictment to be amended in particular 1 Stat
for this reason it is of no use in crimes or offences 180
of a high nature. But in civil cases prisoners ap-
pear & plead by counsel - and they may on some occasions
insert a wrong name for the purpose of doing this, and the court

1. *Defective Plea.* Another cause of abatement is the
 abatement *terre* of the defendant. The condition of the writ
 10. it may be pleaded for error, but if the error is
 11. because some advantage can only be taken of it
 12. that is a plea in abatement. The law never allows
 13. married women to be sued alone. But if a feme
 14. sole dies, for instance, a married woman she cannot plead
 15. abatement in abatement, for she shall not be allowed
 16. in a *defective* to defeat a suit rightly commenced
 17. against her. If a feme sole died, and a writ being
 18. of her *curator* she must plead it in abatement for
 19. that she pleads in her own name, the exception & answer
 20. either. she waives it also by impugning. The *defective*
 21. *curator* and she does not plead in abatement but
 22. as an *exception* & then she herself can take no ad-
 23. vantage of it after impugning, or plea of the writ.
 24. 1778. yet not making any in any stage of the proceedings
 25. or after verdict, or it may be good cause of error.
 26. It must be noted of error in fact & not one upon
 27. 1781. the record. The record is a *curator* & not an *exception* and the
 28. *curator* is a *curator* with the *curator* & not an *exception*.
 29. 1782. *curator*. If two *curators* are in a *curator* & not an
 30. 1783. in the name of *curator* & not an *exception* and are not *curators*
 31. *curators* & not an *exception* it may be taken *curators* of
 32. 1784. in a *curator*. It is no cause of abatement
 33. 1785. that the defendant is an infant & the *curator* was
 34. 1786. not named. For the *curator* in that case is

will allow time to summon the guardian - Vice & Administrators
 claim if he has one - if not they may appoint a guardian ad litem.
 In this State where the guardian is appointed by the court of Probate
 if he is not summoned the court will continue or postpone the cause -
 but if no guardian has been appointed by the court of Probate - the
 court as in England will appoint one as in England ad litem.
 That an heir who is sued upon the decedent's debts is an infant
 is no cause of abatement - nor is any defence to the action.
 By the Com. Law the party shall demand or the pleading shall be struck till he obtain full age.
 In Com. we have a species of guardian not known to the Com. Law viz conservators
 or overseers appointed by the court to take charge of the estate of an adult -
 that he do not waste it - This person is not liable to be sued alone - but it is no cause
 of abatement that the conservator was not summoned or cited.
 The infancy of the Plaintiff is pleadable to his disability.
 An infant may be sued without guardian because he is personally liable
 and because the Plaintiff may not know who his guardian is.

The next cause of abatement is the Death of one of the parties -
 as if a sole Plaintiff or sole Defendant die pending the suit - the suit
 shall abate of course. If one of several Plaintiffs die pending the suit -
 the writ except in possession

²⁰⁷ Dilatory Pleas - action after summons and service
abatement. Shall be stated. In real actions if one of several
die. After die rendering the suit it is not of course in
20 all cases and the reason is because the extent of
100 the survivors right would otherwise be increased
7 for in the worst he goes for his own original part
in the only. It was the rule of the Common Law - but now
105 by Stat 8 & 9 Will. III. if several P^lts. or 1 or more die
100 before it does not abate provided the cause of action
2 be such as may survive to the survivors P^lts. - if the
cause of action be joint. but the death of one P^l must
115 in such a case be suggested on the record. And by the
statute it is stated that if of several P^lts. one or more die it is
22 23 not cause of abatement provided the cause of action
be such as would survive against the survivors
100 P^lts. - in this case also it must be suggested on the re-
cord for if the P^l takes judgment against all the
140 P^lts. before death it would be good cause of abatement
100 105 Even before this Stat. the rule of the Com. Law was that
110 if one or more of several P^lts. died pendente lite it
180 was not cause of abatement because there being a joint
demand it survived against the residue. This Stat.
100 also provides that if a one P^l die during the suit
205 it shall not abate if the cause of action be such as
would survive to the survivors P^lts. and in such a case
210 the cause of action shall not abate if the P^l dies before
215 judgment is obtained.

thereon the said action shall not abate - Pleas & Pleadings
 by reason thereof if such action might originally be
 prosecuted or maintained by the executor or ad-
 ministrator of the ~~deft~~ is deceased. The same Stat.
 makes a similar provision in case a sole ~~deft~~ die.
 We have a Stat. in this State similar to the - only
 in England some interlocutory judgment must have
 intervened else the writ will abate - whereas by our
 Stat. it will not abate tho there is no interlocutory judg-
 ment intervening - or preceding the death of the party.
 If a sole ~~deft~~ die pendente lite when the cause of action
 will survive to his representative - the executor or ad-
 ministrator may intervene & prosecute the action
 upon a suggestion of the ~~deft's~~ death on the record.
 But if a sole ~~deft~~ die a *replefacias* issues to the ex- 4 Bac
 ecutor or administrator to show cause why judgment 42
 should not be rendered against the ~~deft~~. Our Statute
 however relates only to actions brought before the su-
 perior court & court of common pleas. The com. Law
 is the rule therefore of our inferior courts of justice.
 The death of one or more of several ~~plffs~~ in Error shall 1 Bac
 abate the suit - but it is otherwise in case of the death
 of one or more of several ~~defts~~ for here the suit shall
 not abate. - Suppose there are two ~~plffs~~ and they
 both die at different times - here the right of prose-
 cuting the suit survives first to the surviving ~~plff~~
 & then to his executor ^{alone} & not to the executor of the one who died first

Dilatory Pleas - the same is the case in the case of
 Abatement at different times. The statute has made no pro-
 vision for a return up to the time it remained
 non in real actions where a sole party is the def-
 endant. The statute relates only to personal actions
 7 But where there are several parties or several def-
 endants the rule is the same & a return up to the time
 802 a. well as a plea and action. The superior court
 in 1800 and their decision was affirmed in 1808 &
 200 in the Supreme court in error - in the case of *Grissard*
 in the return entered the cause was removed up to se-
 305 5. *Grissard* for new trial. It is a remarkable case
 1816 the case is that the statute making provision for new
 249 trials was enacted long before that for surrogacy
 430 - another cause of abatement in *Varian* between
 8-43-4 the writ and declaration - as if one sues out a
 400 writ in trespass and declares in case this would
 10-20 be fatal and the plea is said to relate to the writ
 100 8. by prosecuting it or declaring on it in a different
 121-125 manner. It is said in some of the old books that
 148-152 the variance is cured in form it must be pleaded
 2106 in abatement or the exception is waived - but if the
 354 variance is in matters of substance it is not waived
 4106 by pleading over but may be taken advantage of by
 246 arrest of judgment. This seems to be questioned by
 4106 *Hippen* and with propriety. The fact is ~~that~~ variance
 638 must be pleaded in abatement or it is waived.

Variance between an instrument & de-Pious & Piousings
 viewed upon a view the character of that instrument - 1601-14
 overt in the declaration is good cause of abatement 2 1602-28
 but it may be taken advantage of on trial by ob. Law 1606
 section 10th variance which it forms - 1601-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-10

[illegible]

[illegible]

a second time & show that there is still Veritas & Honesty
 another - tho' the one last given is a deposition. But I think
 if it appears upon the face of the deposition as well as upon
 inspection of the Veritas - that the persons, in whose names
 are not all bound as parties it is an in rem matter but it
 will not stand for a verdict. As to regard to the same names
 joined; I think in actions in rem it is not necessary to set out
 in a statement as it is admitted - for the liability is absolute
 joint or several as the case stands. But in actions in rem the
 one in debt is not the act of a partner. If two or more persons
 are sued in debt and one only is in fact a partner, the other
 not, the other was still no partner, cannot be placed in a deposition
 statement - but he must plead the joint issue. - It is otherwise
 where in actions in rem there is an exception found
 upon an intention to the other rule, for if there are two
 joint owners of land adjoining the highway and one only is
 only named in the request of necessary repairs of the highway
contiguous highway. (By the law Eng. the owners of such
 contiguous lands are liable to repair the road) it may abate
 the writ on this account and have the other joint owner
 not brought in. If three or more persons are jointly
 and severally bound in a contract and the plaintiff
 sues two of them only, the nonjoinder of the others
 may be pleaded in a statement. But as has before
 been said, if two or more are sued upon a contract
 when one only is liable advantage may be taken
 under the joinder. And if the joint in this case find

1. *Quintus* *Alas* - that is executed the contract and
 the other not - and give damages according
 to the contract made. This branch of the
 subject of abatement ^{in equity} is, however, not so much
 of practice as it is in practice.

2. Another cause of abatement is the pendency of
 a prior suit of the same nature and cause between the
 same parties. One suit is, however, not rightly
 brought is a good plea. This rule holds true only
 where the two suits are of the same kind or at least
 concurrent - as the first & second suits in the same thing
 but where the object of the ^{two} suits is different and
 one suit upon a mortgage deed - or petition for
 a foreclosure and the other will not bar this ac-
 tion on the original bond for the payment of which
 the mortgage deed was given as a security. It will
 make no difference whether the two suits are be-
 fore the same court or different courts. There is an
 exception to this rule which in Conn. is hardly
 known - in the State for the purpose of defending
 the same suit it is sufficient that the first suit
 was determined at the commencement of the second
 and is where only the original writ is issued out in the
 first ^{instance} and a second is issued afterwards with a count
 or declaration. It is not abatement. There
 has been a series of decisions in this State which are
 all in conformity to the general principles

of the law, and on the subject - It has Pleas & Pleasings
 have been decided that if from any cause the suit
 is wholly ineffective - as if by a writ of error, or by
 the property of another man is attached instead of
 that of the right - or if the property attached be of the
 manner of error - in either case another suit may
 be immediately instituted & the first cannot be
 pleaded in abatement. So if the first action be what
 is misnamed - or not adapted to the case it can-
 not be pleaded in abatement; the second - then it will
 be seen is not necessary the right with regard to
 but its object is rather to prevent vexatious suits
 & conclude therefore my opinion is that but two
 suits for the same cause of action - evidently not ex-
 cepted - the tendency of the first cannot be pleaded in abatement
 in abatement of the second. As to action, or book short or
 account there may ^{be} two cross actions of account by one
 & against each party at the same time both parties
 claiming a balance of accounts. - But in all ac-
 tions if another step is added in the second suit
 so there be more steps in the second than in the first
 then the first action may be pleaded in abatement
 of the second - & the better opinion is that there
 the suit abate as to all. On the other hand the
 more the right in the first action be united in the
 second but the first action may be pleaded in abatement
 of the second - and in this case the writ of error will

Dilatory Pleas - But in all these cases, and it should be
 contented to be understood that if there is to be any action
 done, a second action may be brought, and the first, if the
 1004 second action be brought & commenced the same
 1005 day on which the first is made, it is presumed
 1006 that it comes in after the first was made and
 1007 forth, therefore the plea of abatement cannot be, made
 1008 in abatement. This is a legal presumption and
 1009 of course cannot be rebutted by testimony to the
 1010 contrary. It is no cause of abatement that another
 1011 cause or action is depending for the same cause &
 1012 against a stranger. But a return is
 1013 had against a stranger for the same cause & action
 1014 then as the same may be the first and a plea, it is
 1015 such no cause of abatement, in criminal prosecutions
 1016 that another indictment or prosecution is depending
 1017 against the same person & for the same cause & ac-
 1018 tion. For the court will ex officio take notice of and
 1019 quash the first indictment. - But in the case of infor-
 1020 mation and appeal it is cause of abatement if an-
 1021 other information or appeal be pending. And if two
 1022 informations or appeals be exhibited against the same
 1023 person for the same offence & there be different return
 1024 on information or appeal will abate the other
 1025 provided they were commenced on the same day
 1026 or it will be presumed that they were commenced
 at the same time - punctum tantum.

Dilatory Plead - the remedy is in the writ of
 Abatement to be returned - But in the writ whether the de-
 fective return be intrinsic or extrinsic - the writ
 in either case may be abated - The sheriff's service
 or return may be contradictory e. g. he is evidence
 of the fact ~~that~~ - If the service is not in
 fact made by the time directed in law it may be
 taken advantage of by a plea in abatement what
 Stat. can be the certificate of the officer. Under an Stat.
 53 it is required that the officer in all real actions
 1100 and in all attachments of real estate in land - leave a copy of the
 54-18 writ with the town clerk where the land lies - the o-
 566 mission however is not pleadable in abatement. The
 1100 debt in no reason to complain - he cannot avail
 546 himself of the defect of service - but if an attested
 5316 copy of the writ and declaration be not left with
 5316 the debt or at his usual place of abode the writ will
 553 abate - however if he reads the writ & the debt it is
 5616 not abateable but in case ~~if~~ ^{he} does not
 523 lodge a copy of the return with the town clerk
 5216 he loses the lien upon the land attached.

563 The want of a venue in the writ is cause of abatement
 5016 In local actions the venue is of the substance of the
 500 writ - but in transitory actions the omission of venue
 5116 is a mere matter of form - It is not necessary in
 5000 transitory actions to lay the venue in that place where
 the cause of action arose - it is sufficient if the action

is brought or venue laid in that county. Pleas & Pleadings
where the cause of action arose or where either of
the parties live. But in local actions the laying of venue
of a wrong venue is cause of abatement - for in such
cases it is necessary to bring the action in that county - where
the cause of action arose or where the
subject of the suit is. - As trespass, false imprisonment, &c.
which cannot be tried except in the county
where the land lies. Want of venue in pleading - takes
away the wrong venue in the declaration is often
general abatement. The rule as to pleading in
abatement for a wrong venue in local actions is
the same more or less at Com. Law. but in transitory
actions in this State it is not material in which
County the action is brought, provided it be brought
in that County where the Plaintiff lives - or where the Stat.
debtor lives - or where the cause of action arose - and Com.
if the venue is not laid in one of these three Count
it is available - If the trial is to be before a sin-
gle minister of justice the venue must be laid
in the town where one of the parties live. Our law
does not confine the venue even in local actions to the
county where the cause of action arose - as is
done in England by a fictitious place.

That the cause of action had not arisen at the
time of commencing the action - may be pleaded
in abatement ^{to take advantage of} or by special plea in bar - and where

176
Declaratory Verdict - where this appears on the record
a statement the debt may demand or arrears the judgment
110m. on if one declares upon a writ the award before the
57-100 time of payment fixed in the instrument the
110m. debt may pray over - should it upon the record
Lower and demand

100 Having once gone thro with the several causes
of abatement days etc. - it remains only to
treat of the mode & effect of abatement.

110m. When in abatement requires begin and con-
100 clude to the writ - but ^{sometimes} ~~it is the case may be to the~~
5, 100 declaration - that is to say the conclusion is

130 praying judgment of the writ that it may
Lower be abated or granted - this is the manner in which
108-0 we universally conclude a plea in abatement.

160 But in this it is said there is a difference in con-
110m. sidering that plea in causes of abatement that are
584 intrinsic and those that are extrinsic. on the
Lower former case it concludes only to the writ. unless when
100 there is abates or is abatable defects (i.e. when the
court ex officio may abate the writ here it concludes
by praying judgment if the court will further pro-
ceed - but when the cause is extrinsic & depends
as if it were some privilege or disability of the Debt
100 here it concludes by praying judgment if the debt
may it to answer the Plaintiff. There seems again
you'd to have been some inconsistency of expression

opinion as to what constitutes the Kind & Manner
identity of a plea in abatement. It is said in Lucas 12
Lucas remarks - that the conclusion is, plea in bar
is the criterion by which to decide the matter, and
by this criterion a plea in bar is distinguished from
from a plea in abatement. Lord Holt says in 17-6
Lucas matter, which goes in bar but begins in abatement
concludes his plea in abatement - it will be a plea in abatement
in abatement - for it is the beginning and ending of a
conclusion that makes the plea - But say his Lordship
Lordship in another place - If he begins in bar the plea
he concludes in abatement - or concludes in bar
after beginning
the plea in abatement it will be a plea in bar.
The true rule seems to be that if the plea in
abatement be founded on matter merely good in bar
or if the plea in bar is good only as a plea in abatement
ment & not as a plea in bar - in the former case it is
to be considered as a plea in bar & in the latter as
plea in abatement - But when the matter pleaded
it will be good in bar or abatement indifferently
then it is to be considered ^{as a} plea in bar or in abatement
indifferently. It is said by my Lord Lord
that a writ is a fault in all pleadings except
dilatory pleas in which a man may use divers
of them in their proper times & places - it has therefore
been conceived by many in the law that according
to the principles of the common law the man

Dilatory Pleas - please two or more pleas; the same kind
 the way it is true copy, and not necessary to be
 150-151 of dilatory pleas in a plea to the indictment - to the
 152 1st. directly to the 1st. and in abatement - but not the
 153 2d. of the same kind - as a plea to the indictment &c
 154 3d. where a cause of abatement is pleaded and judgment
 155 is rendered overruling the plea - no writ of error
 156 can be immediately brought - It cannot be brought
 157 till after the final judgment - but after final judg-
 158 ment error can be assigned for this as well as for
 159 anything else - However an able defect merely
 160 in a ground of error does it were plead in ab-
 161atement. but where the defect is such as may be
 162 taken advantage of, not only in abatement but in
 163 any stage of the pleadings this is cause of error
 164 & the clerk suffers judgment to go by default &
 165 judgment is afterwards brought to review upon a writ of error
 166 he can take advantage of no matter of defence which
 167 might only have been pleaded in abatement to the
 168 1st. or 2d. declaration, & as a declaration may be
 169 good in part and bad in part so the writ may be
 170 Law 106. & so it is to be tried in part
 171 172 as to the judgment on a plea in abatement, in
 173 a plea general it cannot be pleaded in bar of another ac-
 174 175 tion for the same cause - it does not go to the merit
 176 177 of the matter in dispute - but judgment in chief or
 178 final judgment reaches the ground of dispute before

between the parties and is a bar to all pleas & pleadings
future relating to the same cause. There are some
cases where judgment on a plea in abatement is
final & may be pleaded in bar of any other in the
same cause - as if the debt pleads the abatement of
the plea is a statement of a real action - this judgment
is conclusive and may be pleaded in bar of any subse-
quent real action in the same cause. The judgment
in this case when it is held that the writ is debarred
ratione may be, & is - Iniquity in end to the writ.
But by the Statute of 22 Geo. 3 the declaration
or plea may in certain cases be amended. - So the
Plt after answering to a plea may upon paying
costs withdraw his demurrer and take issue on the
plea. Where judgment is rendered in the Plt on a
plea of abatement it is different - If the Plt demurs
to the plea in abatement and an issue in law is joined
to the court - the judgment for the Plt is a judgment
on the law (let the debt answer over) - But if an issue in
fact on the plea in abatement is joined to the plt, and
when the matter is shown - & found for the Plt at law.
Law judgment goes in chief against the debt. - But
in indictments it is otherwise for according to the
Statute of 22 Geo. 3 the justice shall hear a man shall
never be convicted upon an indictment except on the
general issue. In this state our judgments are pre-
sented to the court and are

271
Dilatory pleas in fact closed to the jury, as they are at
law. But here when one is in fact an a
batement plea in a statement is closed to the court as it may
be & frequently is done. The judgment is for the claim
is responsive to the plea. This is merely an interlocutory
judgment and not final as when the plea in fact
is closed to the jury. This is a distinction not taken
notice of by Judge Wright for he gives it according
to the common law. — If that is pleaded in a
statement which is good only in law judgment is
rendered in chief for the rest. But the plea may if
law be chosen in such case enter a responsive plea so that
the writ may be abated. It is of course a general plea
plea only the other way except after the proceedings. The
debt can never be removed in a statement as it is called
law (that is) matter of abatement. In the writ can never
be demurred to for if the debt does demur to the writ
judgment will go in chief. A demurrer always
goes to the pleadings. After judgment of responsive
verdict another plea in a statement cannot be
pleaded. But if the writ is amended it then be-
comes a new writ & may be abated as before.
By the civil law after a general impugnation the
writ cannot be pleaded in a statement because by this
debt is removed & no exception to the writ and
thing admitted is good. ^{Except where} If the case is not yet
after a general impugnation it may be removed as before.

The defendant, also plead in abatement Pleas & proceedings
 after a special importance for he here saves to him. Leave
 self an exception to the writ — of a term sole bring 175-5
 an action and after a general importance married Oct 20, 7
 This may be decided in abatement. The Defendant cannot
 plead in abatement after the time in which ^{in ab} has 777
 expired. In Eng. four days ^{are} allowed for this purpose, taken
 after the first day of the session of the court. In the 516
 Superior court in the state all pleas in abatement 1826
 must be filed before the opening of the court on the se-
 cond day of the session — In the court of im. pleas, that
 they must be filed before the impaneling of the jury, 542
 on the third day of the session — This rule does not 1800
 hold where by operation of law the suit is continued 564
 as in foreign attachment for here the cause may
 be continued to the next term. This finishes the
 subject of Dilatory pleas. We now come to the 2d class
 of Pleas to the action

Pleas to the action are subdivided into two kinds
 viz 1 the general issue & 2 Special pleas in bar.
 As to the **General issue** — Lord Coke defines it to be a 1st
 single certain material point issuing out of the 126^a
 allegations of the parties and consisting regu- 433
 larly of an affirmative and a negative — and 54
 to be tried in twelve men. The word issue is derived 1826
 from the Latin *exire* signifying a going out
 & answering to the article (public's business or universal)

Olaus to the action to constitute a cause. If the
 27th must be in action a direct affirmation on one
 1st side and a direct negation on the other - & so is
 2nd the general rule now but it has in many cases
 18th been somewhat qualified. Therefore an agreement
 8th must be made with the situation on the other
 17th but to not in terms done in the other, and
 18th is no case done. For if one party says that John White
 is dead and the other says that he is alive it is no
 good issue. The old rule has been much relaxed in
 11th as much as it has been decided that where one averred
 6th that he was born in France & the other replied that
 11th he was born in England it was held to be a good issue.
 And in this case it is laid down as a rule that
 where two affirmations are so inconsistent with
 each other that if the second is true the first can
 in no manner be true - or if the first is true the
 second can in no manner be true, in such case
 the issue is good. This says Mr. Gould is not a true
 rule. I consider says he, this decision incorrect
 were improper & undisturbed. There is no propriety
 11th in it. There is, says he, but one instance where
 20th the issue consists of two affirmatives given a verdict
 11th of right, when the issue is that the def. has more right to hold
 11th than the demandant has to demand. I answer, 1st and
 best answer for it is the issue in that case where
 it can be done according to the old rule, I think so.

There are usually reckoned two kinds, Pleas & Pleadings
 of issues viz. gen. issue - & special issue - and according
 to Lawes a third issue called a common issue as the 4th Book
 plea of non est factum to covenant broken - this is 54
 by the Lawes called a common issue. The general issue Lawes
 is that which traverses - denies or thwarts at once the 110
 whole declaration - or it is the denial of all the material
 serial allegations or affirmations in the declaration. 1305
 A special issue is the joining issue on some particular part
 part of the declaration and pleading a special issue 142^a
 to be not - or it is that which denies some material Lawes
 allegation in the declaration - or some special mat 145
 ter alleged in the subsequent pleadings on either 156
 side - & is commonly called a Traverse which will 462
 be treated of hereafter. So all actions founded on 1702
 any misfeasance - the general issue is Not guilty 257
 This is the general issue in Ejectment and also to 260
 debt on a penal Statute - tho the form of the action 161
 is debt yet it arises ex contractu - he denies the offence 260
 & if he denies the offence he at the same time denies 1702
 the indebtedness. Not guilty was formerly held ~~to be~~ 257
 a good plea to an action of debt - but it is now 260
 settled to be not good - but if the issue is closed 264
 on not guilty it is cured by verdict. So the action 260
 of Debt - the general issue is All debt - debt on specialty 28
 non est factum - to debt on judgment - and tid record for and 260
 record - to the action of account - never bailiff - never receiver 57

245
a function in the like to disqualify him Platts & Pincus
from giving a verdict - no verdict can be given un-
till his place be supplied or another juror be impan-
nelled and a rehearing of the cause be had - but if
the offender had been tried once he could not be tried
again. The fact is no trial is had till the verdict
of the jury is given in. - The judges are not till then
criticised of the verdict - and another juror may be im-
pannelled & have a rehearing of the evidence - so the
offender was not in fact tried by the first hearing.
The gen. issue of guilt is never concluded as to the counts
but with a verification - and the matters in issue are
to be tried by the court. - a verification having been the
directions - after the deff. pleads the gen. issue and con-
cludes with a verification - the deff. affirms over the
existence of the record & prays an inspection to establish
the deff. to win. It is not universally true then, even in
com-law that the gen. issue is always closed to the court
& much less in this state to be settled all general
issues may be concluded by the parties concluded
to the court - & when the action is brought before a sin-
gle magistrate or justice of the peace the gen. issue must
conclude to the court in all cases except one. It was
enacted by our legislature about a year ago (cap. 11)
Gen. 1 that where a writ holds over the term the
justice before whom the action is brought may sum-
mon a jury to try the gen. issue. There are but two

Thus to the rule, two ways of continuing a plea of the
 general issue - viz 1st to the issue & 2^d with a verification
 of the plea - under the old rule - a justice
 of the peace could conclude it thus and after he
 had signed on the return by trial. But if on plea is tendered
 on the part of the D^f which can never be a general
 issue - but a special one or a traverse - it does thus
 and the plea may be inquired of in the country - The plea
 is not a fact - and all the other parties admit or deny
 it - and the plea for itself means the issue is to be
 tried by the D^f with a traverse. In Eng. the omission of
 the similes is matter of substance and cannot
 be a plea to verdict. But this has always been con-
 sidered a mere rule & for the purpose of evading it
 the courts have availed themselves in every manner
 to effect a change without directly denouncing it to be
 law. - Where after plea tendered the other party
 signed his name to it - it was held to be a plea to verdict
 as also where an *ad. execution* was returned it was
 held to be good after verdict. Here the rule was similar
 it was not very exactly distinguished with the rule
 In this state it has been decided by the superior
 court and affirmed by the supreme court of errors
 in the case of *H. v. H. & B. v. H.* that the omis-
 sion of the similes is mere matter of form and
 cannot be a plea to verdict. - This decision was according to
 the principles of the English law - & this was the

ground of argument at the trial. *Plas & Pleasings* 247
Indeed our *posita* is so far different from that
in England that it supersedes if not the *similitudo*
itself at least the *argumentum* of it. *Posita* *similitudo*
is in these words. The parties were joined in issue to the jury.
The English *similitudo* is in these words viz At the day and
place within contained come as well the within named *ps.* as the with-
in written *ps.* by their attorneys ... to the jury &c. The *similitudo* is
no allegation - it is a mere memorial of consent
to put himself on the country or court for trial. When
in Lonn. the *open. issue* is closed to the court the
party tendering the issue must expressly state
it be by the consent of the other party. Thus and altho
by agreement he puts it - or it will be demurrable - *et in* *3 Bbeam.*
issue always closes the pleadings and when well *314*
tendered by one party must always be accepted by *but*
the other. - But if the issue is not well tendered *26*
the other may demur to it - or if the issue be well *but*
tendered & not accepted by the other - the party who *88*
tendered issue may demur. The words *modo et forma* - *1000*
in manner & form are sometimes of the substance of the *318*
issue & sometimes merely matter of form only.
The rule for determining when it is of the substance
& when only form is that when the issue goes to some
particular point or part of the declaration of some
material point of the plea or allegation - it is then mere
matter of form & if omitted it is curable by verdict

24) Pleas to the action. But where the issue is taken on a
4th. & collateral point arising out of the pleadings it is
488 of the substance of the issue. These says Mr. Gould
489 must seem to be arbitrary rules but yet in these a difference
490 than they are perfectly correct. These words do not
491 but in issue the circumstances of time place & traversa
492 and if these circumstances of time place & were
493 originally material (ie) they do not include a true
494 case of circumstance in such cases. These words re-
495 gularly occur in every issue they amount to a
496 particular traverse in many cases. An immaterial
497 issue is one taken on such a point as does not de-
498 cide the merits of the cause - or it is where what is
499 materially alleged by the party pleading is not traversed
500 or not by the other party. Any issue therefore upon
501 which more is pleaded than has been traversed by the other
502 party is an informal issue & is not rightly taken in
503 the point of law. ¹⁰ where allegations are not traversed in
504 a right manner. An informal issue is aided by
505 verdict - the fact is special & immaterial - but an imma-
506 terial issue is not helped by a verdict. An issue
507 cannot be joined on an affirmative or negative pregnant
508 & a negative pregnant is one which implies an affir-
509 mative and an affirmative pregnant is one that
510 implies a negative. An issue joined upon an affirmative
511 & a negative pregnant is cured by verdict & fact only when
512 the issue is on the affirmative. But such pleading (ie) affirmative or negative

249
I have taken the measure of this measure - Piers & Marching
there is still a measure of this measure - 1880
but it is on the other party. An affirmative measure of
it is broken and to be paid, but it must be understood with
with this qualification. ^(not imp.) - The genuine covers the
whole declaration so that under it the def. may be black
left out the pth allocation. But the true price paid 1880
all the allocation of the pth, ^{in issue} but this ~~genuine~~ is the 1880
proper plea to actions on the pth contract where 1880
the matter in the declaration are not intended to be de- 1880
sired - and as we are not in a position to do so the 1880
did in fact create it - but the may prove the genuine
and give coverage in evidence. But it is a dead and black
issue in its own nature and not from any more - 1880
partly of the matter or the object - the genuine is not
not the object of the pth for that which renders it void can
not be given in evidence as to the genuine - (we have 1880
various cases). It is a general rule that matter of
defence inconsistent with the pth the genuine 1880
cannot be given in evidence under the genuine 1880
thus a feme covert may sign a bond but in her
contemplation she cannot bind herself, and therefore
she may say it is void. It is a general rule at
so that if a validity is made void by the ^(at that) the
void matter must be paid - for that which renders 223
it void cannot be given in evidence under the genuine
a woman bond. She may take her and she may.

[illegible]

257 Reas to the action - that a man can find out what the
om. issue action was, even if he is a party. I believe
White says that in that the rule applies only to actions,
198 in which it is not it seems as if there were no reason
to be made for it. It is not by implication of law that the
199 debt or duty on special facts is created by
200 that an express premise. And it is a general rule that
201 in the action of individuals, any thing may be
202 put in evidence under the general issue ~~except~~
203 show that the defendant is not a party at the
second time of the plea pleaded - but there seem to be
204 exceptions by the stat. of limitation - Lunacy
205 self-off - Bankruptcy - record & satisfaction - these
things do not go to the gist of the action, they do not
show that there was once a cause of action - nor
as to the discharge of the duty, yet they must be
pleaded specially. I have never been able to say
otherwise to cover the true ground on principle
upon which these several defences must in
this action be pleaded, because while those before
mentioned are now almost infancy, release, pay-
ment of debt & the stat. of record & satisfaction may
be given in evidence under the general issue. I sup-
pose however ~~in error~~ that the difference is not
to be admitted to any original mistake - but the
main point of difference now is & is so far from
that the rule that the stat. of limitation is to be pleaded

The sixth must indeed explain the Pleas & Pleadings
the substance of the plea, say a plea of trespass - And
the objection which goes to the gist of the action 128
belongs to the plea and conclude in the country 129
And is called a traverse or special plea. It is 135
a plea in law, and is the subject of a plea in law. And
must be pleaded, if it is not from those that concern 134
the substance is pleaded to, part of the plea and is
called a traverse. For in the former case a plea
is traversed & cannot of course be accepted by the other
party. But in the latter case special matter being
alleged by way of justification the plea must be
left open for the other party to deny if he will. If it
must conclude with a confession & no issue be 136
traversed. But a special plea must not be to the 201-2
general issue is regularly made maintainable for it tends Cr. 2.
to lengthen the record unnecessarily & to refer the 201-208
question of fact to the court. Suppose in the action 329
of trespass the defendant pleads an alibi, that a war was where
else as in China at the time of the trespass complained of. This 137
special plea amounts to the general issue - for it is
not a matter of law that because he was in China 318
at the time therefore he did not commit the tres-
pass. But it is matter of fact - or a conclusion of fact
but in law - a matter of law. For we are matters of law.
But notice that in the former case a special plea 320
amounts to the general issue if it contains special 41

As to the action, matter of justification is good - civil
in a real & better - the right to demand the force and
law. It is a plea specially in a civil case - and it is the
208 one matter, law might be shown to be a civil case. Here
209 he admits the facts but alleges some special
210 matter in a defence which in some cases is the
211 special right of action. So also at Com. Law in the action
212 of trespass, ^{where the title of land is in issue} the plea is at large & raised a special
213 plea amounting to the gen. issue by putting the
214 plea in issue or supposing him to have an appeal.
215 Once or twice of like kind indeed in point of law
216 but of which the jury are not competent judges
217 Giving colour consists in alleging some feigned
218 matter in favour of the plaintiff right of action in or-
219 der to justify the plea making a special statement
220 of his own title - or to warrant his leading specially
221 for the purpose of putting his own title in issue
222 & the court to decide which title is the best. It is a
223 special plea amounting to the gen. issue in the stat.
224 of Com. Law in the action of trespass - as a
225 special plea, title to land. The judge if it is found
226 may in their discretion allow a special plea amount-
227 ing to the gen. issue to be pleaded in some cases - and
228 the rule for determining when it is thus allowable
229 as expressed by Robert & Coke is that if the
230 plea pleads such a plea as may be a special plea in
231 the mind of the law, the gen. issue is not in issue.

intricate questions of law - the Pleas & Pleadings
Court may in their discretion allow of such, & so called
cases. But there are some contradictory opinions
in the books with regard to the manner in which
the plea is to be made, & of a special plea is - 104
moving to the court. It is said in some
the plea is to be a good cause of special de- 5
murrer. - This says the Court cannot be true if
it is discretionary with the Court to allow such
pleading - for if it is, & the cause is a demurrer the 112-117
Court must ultimately decide. Hence according to
the authorities it is no cause of demurrer 12
but a motion to the Court that the gen. issue be
or will direct be entered on the record and that 174
such pleading is not demurrable. My opinion
says the Court is that the last is the proper mode 18
of proceeding. But suppose the Court on motion
to have a gen. issue or will direct entered on the record
suffers the motion & the def. refuses to have ~~such~~
a plea entered - if the Pleas Court and the Court, in
the demurrer - judgment may go in chief against
the def. This says the Court with reconcile contra- 5
dictory opinions on this subject. It is said also 202
that if the def. will not plead - (and he is not obliged
to plead) the Court may, in the discretion of the plea
Court, the def. may, for ever, be never not answer
the question of a demurrer. on this point

Plea to the action - it is the common practice to demand
 such a plea, and to offer it. I am in no doubt
 that the master of the ship is a proper party
 to the common law - and that the plea that were
 made the question as to the law of the land
 in this state they would say that according to the
 law of the land a master is not a party to the action
 88 is the only proper party to the action - and a plea
 89 that the ship was not the property of the defendant
 will support the defence. There is a great distinction
 90 between a special plea and a general plea. A special plea
 91 will support the defence and a general plea
 92 will not. A special plea is one which admits
 93 the fact of the ship being the property of the defendant
 94 but denies the fact of the ship being the property of the
 95 defendant. A general plea is one which admits
 96 the fact of the ship being the property of the defendant
 97 but denies the fact of the ship being the property of the
 98 defendant. A special plea is one which admits
 99 the fact of the ship being the property of the defendant
 100 but denies the fact of the ship being the property of the

with the gen. issue - I do not want to see *Précis & Résumés*
either of the two proceedings either is good as a gen.
issue. The *Précis* is in French the *Résumé* is in English
I have been thinking of an answer to be delivered on 27th
to the 28th when the performance of certain conditions
is required - alleging that these conditions and conditions are
perpetrated & so on. I will not say that the *Précis* should
be a *Précis* of the *Résumé* - this is a *Précis* of the *Résumé* with an
introduction or a *Précis* of the *Résumé* - there has been
been a *Précis* of the *Résumé* of the *Précis* of the *Résumé* of the
Précis of the *Résumé* of the *Précis* of the *Résumé* of the
to the country or with a verification - some have
said it must always be closed to the country & some
others have said it may be closed with a verification
then. It seems to me as if the *Précis* of the *Résumé* of the
line of an issue will decide the matter. For if you
conduct it with a verification it is a *Précis* of the *Résumé*
amounting to the gen. issue. As the law now stands & as
now it is never necessary for the defendant to be
said so. Indeed in many or most cases it may
be closed & not necessary for the defendant to be
said so. Give the 28th notice of the proceedings, facts &
facts open for defence & so be used to the 28th rather
than the 28th. This idea may be determined to the
it may be determined to the 28th & it seems no more than
reasonable that a *Précis* of the *Résumé* of the *Précis* of the
be said so as well as to the 28th - this is what the *Précis* of the

if the story stands as it is the matter. *Rich. & Thomas* 127
 conclude with an answer on the grounds of law. *127-128*
 from which it is clear that the matter is not
 there is one kind of plea which does not
 not at all do so. *128-129*
 kind of the plea - it is neither a common nor a
 special plea - but an *Estoppel* - but the matter *129-130*
 for a defence alleged is that the plea is presented
 or collapsed from a certain fact stated by him. *130-131*
 no declaration. is then in fact admitted. *131-132*
 admit all traversable allegations which it does not
 not traverse but does in avoidance of them. It is *132-133*
 somewhere said however as a rule that exceptions *133-134*
 of jurisdiction must appear, and the fact that *134-135*
 admitted in the declaration because it is admitted. *135-136*
 to, being what is admitted. But says one should the *136-137*
 rule is not one and the reason given is not ex. *137-138*
 it - for every plea in fact admits of some which *138-139*
 it does not deny. where there is the negating of an *139-140*
 exception, admission - and where the use of the *140-141*
 of the rule & of special plea in fact is not *141-142*
 advance to the same kind of matter. hence the reason *142-143*
 for this being done is not valid. It differs from *143-144*
 the common in that there are no exceptions and *144-145*
 long avoidance as the other admits both matter *145-146*
 of assistance. or, we say, it must usually the *146-147*
 always be in the affirmative. *147-148*

Pleas in the motion - matter it must regularly conclude
Special pl. with a verification - because as has been before obser-
 ved this is the only established mode of keeping the
 575 pleadings open and it is necessary that all pleas
 containing new special matter be left open, for
 772 the purpose of giving the other party an oppor-
 tunity to reply. By Stat. 5 Geo. II the special plea
 1725 of bankruptcy may conclude to the contrary. Sir
 Lanes contended it could not, when I first dis-
 145 cussed that a single special plea in bar was allowed
 224-227 to conclude to the contrary but says he soon found
 Willes this was introduced by a Statute - a plea merely
 5 negative need not conclude with a verification
 Lanes for in conformity to the general rule that in such
 145 cases the affirmative of a question must prove his
 negative affirmation it has been thought to be a kind of al-
 33-332 lidity, in one offering to prove that he did not do
 41000 certain acts charged against him in the indictment.
 30 It has been observed that every special plea reg-
 ularly and as a matter of course what it does not deny -
 according to debt to debt on bond is not good
 it contains no new matter of avoidance and admits
 1000 the execution. Lord Coke says that every debt must
 285 plead such matter as is pertinent and proper for
 300 him according to the quality of his case, and in
 fact. This says the plaintiff is no more than a mere
 allegation that his plea must be good. The fact is

1st Every special plea must contain Facts & Assertions issuable matter, for it must consist of matter which is traversable otherwise the other party could not traverse what is alleged by the deb. as if deb. in an action on contract pleads that he was always ready to pay - that is a bad plea for it cannot be traversed - because there is no way of coming at the prop^r - it is a fact within his own private knowledge only - the subject of the plea is therefore not issuable. 2^d Every special plea in which fact and law are so blended that they cannot be ascertained is ill - It is not possible to plead any special plea which will not or may not raise a question of law - but it must always be separate and distinct from matter of fact. Thus in *Trover* or *Trespass* for goods if the defendant pleads that he is lawfully intitled to the goods of all felons & the pl^r traverses it by denying that he was intitled to goods of all felons for this would be the only proper traverse - in this case the law and the fact would be brought up confusedly - his being intitled to the goods of felons would be a question of law & whether the goods so taken were those of a felon would be matter of fact - therefore the plea is bad - the deb. should have pleaded it specially stating how he became so intitled whether by the crown by parliament or prescription. 3^d The special plea in bar must answer

Piers to the Nation - the whole government is ac-
 cused of treason - it is a crime - I am in the
 nation - ~~the government~~ suppose the law should
 secure in justification or release without transgressing all
 acts of treason - since the nation - here the law is
 said - so if the nation, the law is really the nation
 should require without any version all acts of treason
 secure the state of the nation - the law is - & if the nation
 should he must transgress all acts of treason - here
 and after. But by the law you will observe says
 should also add that the law would not cover the whole
 declaration in one place - but he says transgress a part
 of the law - and a part of the law - to a part of
 and act to the country with a view of not only
 the same is the case in all the subjects of the
 things - as a replication of the law - I suppose in
 an action against a law - the law is carrying away
 and acting with the law, please that he is dis-
 charged to the law - there is a law, the
 to be right and have been carried out to the
 nation - suppose in an action of the law, con-
 sidering there would be a law, taken from the law
 shall be a law, the law should the truth is in the law
 shall be a law that the law should be - this is not
 a law, the law should be - the law is the law
 of the law in the law is an action to the whole
 government - but the law is only a part of a part

the plea is insufficient and the plea Pleas & Hearings
must remain. But if it is, it is important to be on hand
answer to a part any ~~and~~ begins and a point it is
is a declaration & the p^r should not declare shall
but take judgment by nil dicit - notwithstanding 178
it is said is a case that the p^r may do so. 219
of matters of jurisdiction which answer the q^y of 431
the action several matters of aggravation and the
there is an answer to the whole declaration. 500
if it is an action between two persons entering a house and there
is nothing the p^r to except the house is the door. 42;
he breaking the door, it is sufficient. - But the p^r. here
may in this case answer make a novel assignment. 60
the expulsion in his replication & make it a real lease
to the substance of it, the action. It would 115-2
assignment or as it is lately called a new assign-
ment is defined to be a more particular state- 292
ment in the replication of some general state- 178.
ment in the declaration. and is much in the 43-650
nature of a new declaration to which the p^r. then
may plead any matter which he may have pleaded 555
to such a declaration. The office of a new assign- 116. Com
ment is to take out of the plea in bar or defence 811
something in the declaration to which the plain 3112
bar appears upon the face of it to be an answer. 572
or to state in the replication what in the declar- 294-0
ation appears to be within the scope of the plea in bar. 105

Pleas to the Action - If a novel assignment be made in
Special pl. the action & trespass it always contains an as-
 sumption that the trespass described in the de-
 claration is different from that mentioned in
 answer the plea in bar. So where two batteries on the same
 day - are sued upon & the deff. justifies generally
 tho the matter of justification lies in fact & on
 to one of the batteries - here the pliff may in his re-
 plication aver that the battery complained of in the
 declaration is different from that justified in the
 deff's plea in bar. This replication is one that cannot
 be traversed for in such case the deff. must plead
 the gen issue to it. & accordingly it was necessary for
 the deff. to set forth specifically all the particular
 facts of any defence however numerous consisting
 of special matters & coincidences. But in later times
 general pleading is sometimes allowable & arrived
 prolixity - when the particular facts constituting
 the defence if set forth specifically would tend to im-
 plement & multiply complaining is allowed
 in as if the deff. should attempt to perform his duty
 in every respect - it would perhaps be impossible to show
 every particular performance & therefore in this case gen-
 eral pleading is allowable. But to allow a general aver-
 ment of a complete performance cannot be decided -
 it is so to be decided - here the deff. must plead
 generally that he is not liable what is necessary not to do

According to the performance of the Acts & Murrings
 servants is only a formal report & no more than a
 consideration of the special circumstances. Robinson says
 in a material point it states the plea. But then in
 an immaterial point it is no more. It is more
 a statement of the facts. This is an immaterial point
 the matter in question - Is the plea contradictory
 himself in an immaterial point no advantage
 can be taken of it by the debt. - thus if the plea in 1808
 charged the debt with interest and goods in the first
 of Nov 1808 & concerned them in the first of Dec 1808
 then the error is material - but if it is stated that the
 goods came into the possession of the debt on the first
 of Nov 1808 and afterwards in on the first of Dec con-
 cerned them no advantage can be taken unless he is
 permitted. as to the form of beginning and ending
 pleadings see the Lawes 138-45-158-161

According to the original division of pleas 4 plea-
 dings says all would we have now gone there with all
 the pleas & pleas to the action. There yet remain some
 subjects not properly ranked under either of these
 heads and first of

Traverse

to traverse is a denial of some particular point al-
 luded in the pleadings and always touches an issue
 as a general issue is taken to the declaration only
 as a traverse may be taken to any part of the pleadings

must conclude with a verification. News & Findings²⁰⁹
is because an immaterial point may be traversed
by the other party, and it will be bound to join with
you on their immaterial allegation. And the other 4th
traverse be taken on a material allegation, yet that
if it concludes with a verification, as all special 7th
traverses must the other party may pass it by &
take a traverse on the instrument. But where a Law-
yer's traverse is taken it is impossible that the point 15th
traverse should be immaterial because a general
traverse puts in issue the whole of the matter alleged
by the other party & therefore it is impossible for the
party whose plea is denied by a general traverse to
abandon his plea or take a traverse upon the in-
strument of the first traverse because his whole claim
is denied. Mr Justice Bullen - an excellent special 23rd
pleader observes that a gen. traverse may in some 24th
cases conclude to the court (ie) with a verification (as in 2nd
avowment) & these two words are as here used for no reason 10th
for say, the main have been the 'incidents'. This dictum of
Mr Bullen - ~~Agreeing~~ ^{Agreeing} could well be used to warrant
such a conclusion - and says he there is no objection
in which such a conclusion would be allowed except
those in which it has already been held. Technical & non-
technical traverse differs from a direct and positive 18th
denial not only in its form and effect but also in its
in its conclusion. A direct denial is proper where 5th 11

nevertheless merely inconsistent with Pious & Reverend
and a religious allegation on the other, and that the
which does not concern in our law case is more 865
by proper but necessary. Now, the depth of our contact
is direct since in fact - the plea must reply that he 80
is alive without that being in fact. There can still
be no issue without words of denial - So if now 208
matter be alleged on one side merely, inconsistent
with that alleged on the other side it is not an 81
issue - as if deep pleads that at the date of the word 811
his co-defendant was dead, & the plea replies that he is al- 810
ive - Here is no traverse - no denial - but only two 200
affirmations - & the replication is that both the two 117-8
statements are totally inconsistent with each other. 150
The plea should have traversed that he is alive with-
out that he is dead - So if deep pleads that he
was dead in fact & the plea replies that he was
dead in fact - this is no good issue. The plea should
have traversed that he was dead in fact. This
general reply would be that there were no such
matter merely inconsistent with the allegation
on the other side - without words of denial - then 1116
which may be not universally true the nearly to 6
to have been relaxed in modern times. It is said in
Hargrave's reports that, the allegations of one party be 117
is inconsistent with those of the other that if there
cannot in any manner nor decree be true - the issue

Lord Coke says it should be a rule that *Plens & Denunciations* ²⁷⁰
are made *plene* upon an *absque hoc* - which before
I read with an affirmative. This is incorrectly ex-
posed - he meant that a *plene* hoc may be *plene*
may be followed by an affirmative. A negative cannot
not be traversed with an *absque hoc* - it is not con-
sistent with the rules of grammar - thus if I say
I think that S. did not seize in fee - I say rather
that S. did not seize in fee - or did not seize in
fee without ^{that} that he did not die seized in fee - here
the *absque hoc* - as being negative of *plene* is followed
by another negative - which in our language amount
to or are equivalent to an affirmative. It has been com-
monly questioned whether the commission of a traverse when ⁴³
necessary is a defect in form or in substance. The
later opinions seem to be that it is a matter of ⁴⁰
substance - but the former opinions are that it is matter
of form - and for reasons before given I agree with you
I think it is matter of form also. If the *absque hoc* ⁴¹
traverse is in the proper right, recovery shows in the ¹¹⁸
inducement of a defective sentence it is ill. By induc-
ment to a traverse is meant the new matter which
precedes the words *absque hoc*. It is a general rule that ¹⁰⁴
there cannot be a traverse upon a traverse. To this
it is meant that when one party tenders a material
traverse the other party cannot leave it and tender
another of his own to the same point or some other that

Traverse - ground of claim or defense - but in most cases
540 in the traverse there is no difference between the
150 ground of claim or defense and the ground of
defense - it is not in fact a question of ground, but the
traverse itself must be such that it did the work in
the ground of claim or defense, and the contrary is not
151 not true however true the fact is that, I did die
in the ground of claim or defense - I did die
in the ground of the traverse and the traverse alternating ad-
154 information. But a traverse after a traverse is good
and the fact that the first traverse is taken on a ma-
152 tinal allegation. The distinction between a traverse
and upon a traverse & a traverse after a traverse is ab-
153 solutely necessary, the difficulty to be understood. 154
155 traverse after a traverse is one which could be made
on precise ground of claim or defense as the traverse before
156 it is not the case - but a traverse after a traverse is
one which does not go to the same precise ground of
157 claim or defense as was taken before on the other part.
158 Thus, the plea of release and traverse at tres-
159 passes is not the release - the plea may, afterwards, be
repleaded to traverse the release for as the day of the tri-
pass to be in the declaration is not material, the plea
if he was not allowed to traverse the release but only to
plead in the other traverse may be committed to the jury
and the issue would be whether he committed trespass
after the release or not when perhaps the release was in

27 Traverse that part of the, say, in going to one point
in the direction of a line, or across to the other
should use of the principle of the measurement. Then when
110 the traverse is completed in 1808 - & the traverse point at \$
120 it is found that the line to be, that the point is at
130 the point of the traverse without the ^{line} above 1808
140 that the line is at the point of the traverse
150 The point must in such case plead that he is not in
160 debt to 1808 & to the rest & receive he must plead
170 for money & interest at the rate of 6%. It is a general
180 rule that the party, & the traverse is to be done
190 does not by joining in the traverse admit the truth
200 of the fact alleged in the traverse & the traverse
210 is not a confession because it is not a confession
220 but a plea to the traverse. A protestation is
230 sometimes used for the purpose of avoiding the ad-
240 mission of the truth of what is alleged in the in-
250 struments document but it cannot be used except
260 1808: unless it is to some future controversy that may
270 there after arise between the same parties when one
280 party afterwards traverses the other it is not admissible in
290 the protestation is a part of the plea & must be made
300 before the traverse. The party, in traversing a traverse
310 admits; & some say it is a confession. But the pro-
320 testation contradicts the principle that protestations are not
330 in the case in some - or rather waives the advantage
340 the party may have by denying the facts are admitted against

211
Thus while some are in within are outside. And, therefore
the within could not be material action, mass, or matter. Still
but if he should bring an action on the level might
arrive his signifying by protestation, allaying the within. But
and the signifying and the action, and the matter. 126
of the demand, conclude the within, from making left
are, this is it, admission to be in, from the
supplanted. And this is the only mode of doing. Law
these actions, which cannot be put in, in the
such as the influence of a traverse. Repugnancy in
a protestation does not vitiate the plea, because it is
not part of the signifying, and the within is not. Law
Thus, by protestation, that such cases are or are not, for, for
and the signifying. And the signifying is not, for, for
at a point. And the signifying is not, for, for
is bad because it decides nothing between the parties. In
at a point. Law it was bad on general demand, for the signifying
issue is at a point, negative - but more it is bad only
on special demand. And the signifying must not only be
taken on a point, material, but on one that is
material. It is not every material, not that it is
material - as the consideration in a point, for, for
material, and of the signifying of the action - but it is not
a direct averment, and therefore is not material. 201
But matter of law, or matter of fact, or material - but
can never be traversed. And generally, matter of
inducement, as well as matter of a signifying, is not traversed.
able.

Traverse - put in evidence such matters, and can be
 found denied. Every traverse must be taken upon a
 20 point, or ground of defence or defence, for if it
 30 extend to more than one - ~~otherwise~~ it is multiplicity
 and bad on account of simplicity - but each one an
 special demerit - the it is inadmissible to traverse
 40 more than one point - the point need not con-
 50 sist of one entire indivisible fact - for one single
 60 ground of defence or claim may according to the
 70 circumstances of the case comprise a great variety
 80 of facts. Thus a debt, breach, injury & release
 90 if the plea is double and the pleur must demur - he cannot
 traverse both - if he does he avows all exceptions to the
 plea on account of multiplicity & must give non plea and
 in the same way. but suppose the debt, breach & release
 100 satisfaction. These both together constitute one defence
 only, so the plea of account alone is not good - nor is the
 plea of satisfaction good alone - but both together make
 110 a good plea in defence - the only way to traverse these
 120 one & the other is to apply it - as much so as if there
 130 were both. If there be two points in the allegation
 140 of the other part, and several & indivisible either of them
 150 may be traversed - and the party traversing might
 160 not traverse both. everything except what is already
 170 in issue can be traversed by the other. But
 180 yet if one fact is alleged - & another fact is necessarily
 implied from that fact - the latter is in issue & may be traversed

and the dead - in the case of a claim. Nias & Mearns
is always implied & there are the 1st may traverse 136-68
live or claim - & also p[er]f[ect] brings the action of as. 75
it is not competent for the 1st to say the p[er]f[ect] ought
to be carried on in front of a river without this. there was
no note or memorandum - he also is cited in 298-629
sally - This is the general rule but it requires
some qualification. In an action on a bill of exchange 90
it is before the day - if the debt pleads payment L. Ray
before the day the p[er]f[ect] may traverse payment to 24
himself or after the day the it is only alleged before a bank
the day. This may be laid down as a gen. rule 944
that where a traverse of the collections precise
as to be by the other party would lead to an issue 175
material issue then it is competent and proper for
the party traversing to include in his traverse what
will make a material traverse tho not alleged 25-560
by the other party. & traverse of what is not alleged 208
ed to the other party is allowed in special term or
ser. some material fact alleged on one part as
matter of inducement to the other party but as 100
it does it is similar declaring thus whereas the debt said 280
in the p[er]f[ect] you are forewarned. Thus whereas the p[er]f[ect] look an debt before the
debtors' forewarn. the debt said of the p[er]f[ect] you are forewarned - here
the inducement is that p[er]f[ect] look an debt before the
debtors' forewarn. Every plea must be broad
enough to cover the whole of the matter in dispute

110. This is a partly confuted and avoided a
 111 part of the declaration of matter of justification
 112 is the like - and also traverses a part - his traverse
 113 must be co-extensive with the residue of the facts
 114 alleged in the declaration not thus justified, thus
 115 in trespass the tort is covered all time before
 116 the ^{defect} if clear blame is shown he must traverse all
 117 ground traverses ~~there~~ and after the release - if a defendant
 118 he must traverse all before - if a license
 119 he must traverse all before after. But says
 120 all under the declaration in non case plead the
 121 11th issue to what he traverses - and alleges special
 122 matter in consideration of the rest - But the mat-
 123 ter of justification is alleged to have ~~been~~ been on
 124 the same day as the trespass tort and the date
 125 cover that this is the same trespass is denied - the
 126 trespass is here identified that according to the
 127 current of modern authorities the date need not
 128 traverse trespass, or before or after that is justified.
 129 But if the date were the acts justified are the same
 130 as those traversed of - all the bit is to do with
 131 make a novel argument asserting that the acts
 132 shown in the declaration are different from those justified &
 133 to those shown in the matter of pleading in traverse.
 134 denied to be covered by some authorities as -
 135 11th entry 184 2nd ed 888 to page 207. The induc-
 136 ment to a traverse in - Maynard is frequently

very embarrassing to young men. And sometimes
harm - especially when the inducement and
traverse are to the same point. Much specula-
tion has been made with the use of an in-
ducement. It is frequently said in our courts
to be entirely nugatory - & so is, as a rule.
These notions, say the judges are merely the result
of a romantic imagination. But it will be observed, that
an inducement when by way of protestation is re-
ally necessary. As also where the inducement of a
traverse go to different points or grounds, & therefore
it is not only proper but absolutely necessary, for
the cause is incomplete without it. The office
of an inducement is to prevent a measure, present
then suppose debt in an action on contract pleaded
that plt^d corruptly agreed to take 10 per cent interest. Deft^d
plt^d replies that he ought not be barred without this 118
that he corruptly agreed to receive 10 per cent interest
being equivalent to an allegation that he did not
corruptly agree to pay 10 per cent - insinuating that he
did ~~corruptly~~ ^{agree to pay} 9-8 or 7 per cent - - But a general traverse or
a direct & positive denial is frequent & preferable
to a technical traverse - as in the above case the
plt^d may have traversed generally the plea of corrupt
and ~~proposed~~ ^{acknowledged} that it once be enquired by the court
and in that case a traverse would be unnecessary &
improper. A traverse must always consist of an affirmative

TRVERSE - an inducement to traverse a so con-
 siderable matter that the inclusion of it
 in a bill is not issuable. The traverse follows and is the
 208-9 conclusion - from the fact that the subject-
 11-17 matter of one must be the subject-matter of the other
 116-103 It is a common rule that a traverse must pursue the
 53ac terms of the allegation - but this mode is not always
 201 right - for it would sometimes lead to a misleading pro-
 2-3 ceedure - as if p^l declares in case of obstructing three
 94 ancient lights de^f pleads with a general traverse al-
 466 lecting that he did not obstruct three ancient lights
 173 this is a negation pregnant for it may be implied that
 432 he did obstruct one or two ancient lights. So in Deben
 61 a bond payable at or before such a day - de^f pleads
 payment at or before &c - p^l replies no payment at
 or before &c - he should traverse the time at the forth-
 201 erwise it would lead to cases like pregnant. A traverse
 100 is usually followed with the words modo el forma. The
 432c forms &c are not even the object of a special demurrer.
 28 A traverse in the terms of the allegation tho a nega-
 100-101 tive pregnant it be the consequence is ill upon the
 87-101 civil chamber.

This concludes the subject of traverse another
 is relating to proceedings in equity. is

Duplicity.

Duplicity consists of several distinct and independent

284
matters alleged to the same point on Pleas & Pleadings
tells me some of the claims of law are the same
it is different & answers. As if different grounds are alleged
does to the same declaration. But the giving different
answers to different parts of a declaration 118-
does not always constitute duplicity - for it is not how-
ever, no relation of parts meaning to allege different
distinct matters to different parts of a declaration
or vice versa it may be a voluntary matter - thus one 1140
part of a declaration may be sufficient in law to 642
maintain the action - another part may appear
superfluous on the face of it but capable of being
of other extrinsic matter - and a third part may
be untrue - according to the facts may demand
to be overruled - and a fourth part may be
dead though issue to the residue. - or also at Bristol 1140
where there are two or more debts each may plead dif- 10-
ferent & distinct pleas for payment of the same as if he
were a sole debt - otherwise one debt would be the 10
money of the other - & it would afford a per, which
temptation to collusion with the non-duplicity as 47
Lordiche says in a small in all pleadings except di-
latory pleas but says it should be an objection
to the use of dilatory pleas it is a fault in a
plea in substance - And the reason why duplicity is
objectionable is because it tends to produce too great prolix-
ity, confusion & vexation in the pleading by the mixing

I suppose - doubt is & contradiction unless we can
 understand matter such as a simple idea is
 sufficient. It can never be a matter for one to have
 two different & distinct matters to the same ^{cause} action.
 still except a few instances. It is laid down by Lord
 II. The rule is that every idea should be simple
 entire unbroken and connected a single point is
 & one single principle of action and passion. This rule
 says the word in some of its branches is rather ad-
 visory or delicate than imperative. A plea is not
 deniable because it is not connected according to
 logical accuracy - nor need it consist of a single fact
 rather more than one fact may be ~~connected~~ and
 perhaps always is necessary to constitute one single
 point of principle of action. Thus if a man pleads he has
 value according to the plea he has - say he has
 interest & value it is also the defence not consisting
 of one single point. If a man would say he is a free
 man & satisfaction - he must not only state that it was
 recorded and agreed between the parties that the cloth
 should deliver such & such a sum in full satisfaction
 of the demand but he must also state that he did
 make it & receive the said sum & that it is
 that receive them - And this case it is not only argu-
 e but absolutely necessary to state more than one
 single fact in the plea for record as one is a debt the
 plea & so is satisfaction - one - they must both be stated

So, a word of arbitrators is pleaded. Pleas & Pleading
the arbitrators must be named - the agreement of sub-
mission fixed the terms of the agreement - the meeting
of the arbitrators & their result is award - he must state
also ^{whatever was} if any thing was to have been performed by the par-
ty pleading. Distinct count in one declaration tend-
ing to establish one or several rights of recovery
does not amount to duplicity. The reason of in-
serting several counts in one declaration is that
if the plff fails in the proof of one he may succeed
in the other. Thus he will state in one count about
what he claims is the state of his evidence - but in
order to be sure he will make another statement
and on the face of the declaration they may appear
to be distinct causes of action as if the action were on
contract & the plff states that the debt on such a day
promised to pay the plff as much as such & such goods
were worth - & in a second count state that he prom-
ised for the same day, to wit, afterwards to pay so much. 175
This does not constitute duplicity - does does surplus. 176
age constitute duplicity - times if debt, plead the di 661
that matter by way of defence one of which is frivolous & yet
and not ignoble - this is not duplicity - as if one pleads 416
a release and also that the plff had a white coat & a
white hat - but the surplus count is matter of 176
discretion never cognizable by the jury. C. 176
city in a declaration has been before and considered 45

Duplicity - in joining two or more causes, and recovery
 cannot be given & cannot be one right recovery, and
 differ only, promissory action - in that the latter en-
 joins whole right of recovery. This is, fifth in
 declaring upon contract & allege that debt combined
 with return to credit & debt & return of ^{just} demand &c
 how but a fraud is joined with contract to evidence only
 the fifth right of recovering the debt declared on, and
 there is therefore duplicity - is also in debt on bond the
 104 assignment of more than one breach in the declara-
 tion. This is at Com. Law duplicity, for by the old system
 108 one breach would work a forfeiture of the whole, per-
 mit ~~ally~~ & therefore it was wholly unnecessary & improper
 112 to assign more than one. But by Stat. 8 & 9 Will. III a new
 Law rule was introduced. This Stat. related particularly
 115-6 to covenants, but as the construction of this Stat. has
 118 been extended to most formal bonds, it is also necessary
 121 for the 4th to assign as many breaches as necessary
 should recover for. But the rule as to bonds in this re-
 124 spect is the same as it is with covenants, for by the
 Com. Law it was always competent for the 4th to assign
 as many breaches in covenants as he would see fit, & there
 was no forfeiture of penalty. In Connecticut the rule
 is the same at Com. Law with regard to the breaches
 127 of covenants. But Stat. does not particularly reach
 130 this, but by a liberal construction of c. 1 Stat. 9, hav-
 ing it in intention to assign breaches as by Stat. Will. III

But by stat. 485. 486. the old way, with Pleas & Demurrings
leave of the court, plead to the same action as many
distinct & different defences as he pleases - and this is done
in the hope of avoiding the necessity of pleading
one single point of defence. & in 1800. we are very
much that, nor such practice. & it is not necessary
to have such practice. because we give in
evidence under the gen. issue as many distinct
defences as is necessary. & besides this our statute
allowing demurrals & the liberality of its construction
towards our courts tends to preclude the necessity of
more than one defence to the same cause, action.
The stat. of 1800. comprehends every plea to the action
character or plea in law & does not extend to sub-
sequent pleading. Duplicity is a defect in form only
& no advantage can be taken of it except by special
demurrer. The defect or error consists not in the
want of substance but in the redundancy of it. Thus,
the demurrer there must be special, must point out
out the particular objection, the demurrer - as in one of
the English reports, "must be in these words" -
"the plea is bad" - it would be very difficult to apply to a case
where the plea is in many & distinct causes. To plead
a action to enforce different grounds of recovery -
here the exception consists in each and every plea
being made by separate and independent - and it might
may be taken advantage of by several demurrers. 1. 2. 3.

Project Sizer. It is a good rule to term such a
 compound a deed, declared on a deed or lease a deed
 title & makes little matter if he must make proper
 claim, it is a deed - then the binder here imbricate the written obligation
 22 The effect of this restriction is that the opposite has
 24 to be by law, here even if it is a deed, it is a deed, it
 26 and also that the deed may in fact it. It is a deed
 28 when it is, when entitled to one is never bound to
 30 stand without it, but if he does stand without it
 32 then he has no right to one & also his right to take
 34 advantage of the omission of the deed. But in
 36 Law of Great Britain a project is never made of a Bill of
 38 exchange or promissory note but is a bill in evi-
 40 dence since at the trial only. The writing is not executed
 42 or declared on as a deed or formal deed. It is only
 44 evidence of the contract declared on. But in Com.
 46 project is made a promissory note because it is
 48 it is here treated as a deed - regarded as a deed only &
 50 it makes no difference with or without the instrument
 52 back & so on &c. In Scotland they often call prom-
 54 issory notes that they may be treated as ~~deeds~~ deeds on
 56 common note of hand. If a right actually acquired
 by deed will pass without a deed or might have
 been created without deed - how to claim such
 right is not obliged to plead the deed - as if he had
 been an assignee of a deed - such assignee
 being a deed without deed as it were it is unnecessary to ^{by deed}

But where the right will not pass in Pleas & Scuttings²⁸⁰
cannot be created without deed - then it must be clearly
declared in a pleading with a party - as in dem. 281
here of a right of land - a release or a devise of 282
land. But even where the right will pass in law 283
be created without deed if the party with a clear title
can so clear the deed & make title under it he 284
is bound to make protest of it. But those, should 285
the deed if he does not make title under it he is 286
not bound to make protest of it. It may often happen 287
that a deed is more matter of inducement 288
to a cause of action growing out of a subsequent title 289
transaction. Thus whereas such deed was made de. 290
here the deed does not go to the root of the action the right 291
is not claimed under the deed - it is only 292
to make the title complete. A stranger 293
to a deed may plead it without protest. And in an 294
action any one who acquires title by operation of law 295
from another who acquired it de. or otherwise 296
is not required to make protest - because the 297
deed is not supposed to be under his control 298
if one is sued in trespass & in detinue under a licence 299
from A. whose title he is pleading being by deed. Here 300
he need not make protest of the deed nor even he to 301
the deed is the possession. But in such case 302
the deed may be produced & brought into court by a 303
pleader. Thus in an action where one acquires title by deed 304

Present & Sayer. The tenant is, never in a position to make
 100th a tenant, at least not by a long time. He is not a tenant for
 200th he is supposed to have a right in the land, & his
 300th whole life. It is not, I may be pleased to say, present
 400th as well as a right, it is a right of the court in
 500th the whole of the land. It is not, in the general
 600th law, since we are always right in the law - they are
 700th not, in the law, the court is a party, but may be said
 800th to be a party to the law. It is said however in the
 900th that the court is not a party to the law, but the law
 1000th is a stranger to a court, may be said it is not a
 1100th party. It is prior to the law, to make the law
 1200th make a law, or it is said it is not a party, except in
 1300th the law, where the law is a party, may be said it is not a
 1400th party. It is not a party, or it is said it is not a party in
 1500th limitation or remainder, or in a law, or in a
 1600th property, or in a law, or in a law. However the
 1700th rule with respect to the law does not apply in the
 1800th state, because in the law, the court is not a party
 1900th of the law, or a party. But the law is not a party
 2000th the law is not a party, & one is not a party to the law
 2100th of the law, or a party. Therefore, in the law,
 2200th the law is not a party, not a party to the law
 2300th in the law, or a party. But says the court
 2400th whether it is a party, or a party, or a party
 2500th to the law, or a party. In a law, because here all
 2600th the law is a party, or a party, or a party

291
If a deed is lost by time or accident Pleas & Hearings
is destroyed by accident, so it may be shown. 2d 86
need without protest. So also if the deed be in the possession
possession of the adverse party, no protest need be made
made. But the party then, pleading must state, on
the special facts why no protest is made - other-
wise it will be demurrable. So in case the deed
be lost or the like he cannot declare or plead with
a protest and give the special facts in evidence 2d 82
unless these special facts are alleged by the plaintiff
by where the protest should be. Where the deed is
is only inducement to the action or defense, as in 2d 88
lost need not be made. It has been long settled
in this state that a protest is never necessary
here for the same purpose as in England - for
in those cases where a protest is necessary in
Eng. law is here demandable without protest and
it is Com. law the omission of a protest where need-
ary to be made is matter of substance & is reversed
by general demurrer - or by motion in arrest of judgment
must but now by Stat. 1687, law is called the omis-
sion of a protest of substance & that it is Com. law the omis-
sion is reversed to more matters, first - by a
verdict, leading in case of gen. demurrer - and it
only on special demurrer. But suppose a deed
is lost or destroyed by time or accident. Here a copy of
the deed is made or made evidence of its contents 781

Project & Copy - Examination. But if we find a given
 10th instance where one blade has been destroyed, that
 44b the deed is actual, but as it must be proved & ad-
 10thly was made to the court by the best evidence which
 205-b could be had that the deed is lost - Here the second-
 10thly an existing evidence to have its contents admis-
 50 sible. The same rule holds where the deed is in
 10thly the possession of the adverse party - but notice must
 165 first be given to him to produce the deed - then a
 10thly sworn copy, or parole evidence of its contents will
 206 be admitted, provided he refuses to deliver it up.
 5thly But suppose there is no sworn copy - nor evidence
 209 of its contents & the party refuses to deliver it up. He
 4thly may be compelled to produce it by a petition in
 113 Chancery - or tho a court of law cannot in general
 compel a party to the suit to produce books or papers
 not where the party suing for an order has an
 interest in the issue. In such case the court will issue
 a mandamus to them. A party who is com-
 pelled to produce may be required to appear and
 bring with him a copy of the same & a witness to the same.
 In this case where one of the parties demands the other
 party must if he cannot produce the deed state the
 reason for it is incompetent for him to give the facts
 in evidence under a motion for over. -
 The chief object is that the other party may come
 over - so that he may hear it read to him.

203
He is not to be obliged to have a new Pleas & pleadings
to him but he is entitled to a copy of the deed at his
own expense for the party making protest i. not a
pledge to make out a copy of the deed for the party. 217
It has been observed that oyer is not demandable
of a record - and even if a record is deed & plea - should
deed with a protest when unnecessary - as if it were
merely inducement to a action - oyer cannot then
be demanded. The reason why oyer is granted
is to enable the party the better to plead. Granting by
or when not demandable is not error. It does no
injury to the party so granting it. It is more sur- Field
plusage. But the refusing of oyer by the court 525
when necessary it is cause of error - If a party is 219
denied oyer in such case he is deprived of the means
of defence or claim. When oyer is granted the party
to obtain it may enter the deed & return on 215
the record & in this way take advantage of any
thing on the face of it or any thing omitted by the
other party - After the deed is thus spread upon
the record - he may demur - as for variance of the 218
instrument counted upon from what it appears to 217
be on the record. It is a gen. rule that if the deed
counted upon is insufficient in law to support the
action or appears to be illegal upon the face of it 218
it may then be spread upon the record and demur-
red to. But if the illegality or insufficiency does not 219

29
release - this is also a departure. In Pleas & Hearings
if in certain known - precedent cases in the 1200
part of the 11th. It declares he was, perjured - 81
pleads that is one request he has. 11th replies that
that he was in real, & per-jury. This also is a departure. 81
ture. If the matter first alleged is pleaded as 120-5, 2
it can have a subsequent plea in pleading it by 2
particular reason is a departure. Thus 11th de 48
clares on an indictment 12th pleads in 11th 12th
supplies ablegin the indictment of London - in which 120
indictment may find themselves in indictment - 120
declaration of plea asserting a right a com. law 81
and afterwards abandoning it & showing a right 11th 40
by that - is a departure. Thus in trespass for taking 11th
cattle - 12th pleads taken damage for rent - 11th replies 20
drove them out of the county. This is a departure for 120
by the 11th. 12th pleads the driving cattle out of 120
the county does not constitute trespass. But if 11th 120
clares on that. 12th pleads in reply - 11th replies 11
that. 12th replies it is no departure. It also where the 120
cause of action is alleged, it can be and 12th pleads 120
an evasive plea a more particular indictment. 11th
the plaintiff is by word of appointment is no departure 120
Thus in trespass 12th pleads 11th may reply that it
is a departure. 12th pleads that indicted act of trespass. 120
This is a departure because the plea is not material.
Departure is a substantial truth. It is not a departure.

Demurrer. Depe there is said by Robert Williams in
1844 his note on demurrers to be not only an official demur-
er, but also a really incorrect & he corrects him self in
1884 in a second note. But the departure is ill on gear
New York - 1881 demurrer yet it is aided by verdict

Dejeuner

12000 part of pleading. It is in strictness, my friend, and
 12001 not a plea but rather a defence, or not pleading
 12002 There are but two kinds of pleas viz. dilatory, pleas
 12003 & plea to the act'ns. & demurrer does not properly
 12004 come under the head of either of these. A demurrer
 12005 advances a legal proposition which is that the plea-
 12006 ding of the defence is not sufficient in law to
 12007 entitle him to right of recovery - It gives no an-
 12008 swer or plea because it admits all fact matters
 12009 fact on the other side are well pleaded but denies
 12010 their sufficiency in law. But thus admitting the facts
 12011 but denying their sufficiency the party demurring
 12012 refers the question of law immediately to the Court.
 12013 It however does not raise a matter in law as the
 12014 dem. issue ~~et cetera~~ does in a matter of law
 12015 it advances a legal proposition which denies the
 12016 legal proposition contained in the pleading demur-
 12017 red to it - it denies the major proposition in the sub-
 12018 scription. & demurrer may be taken at any time
 12019 before issue is taken, as the issue is closed

29
it demonstrates as much as it is admitted. Pleas & Pleaings
only such matters of fact as are well pleaded. 2
there are the plea in case and broken assumpsit. 27
hearts well and others ill of the death of the defendant. 28
who is dead. The plea can only take judgment 56
for those precedents that are well assigned that will 82
survive to be overruled. 84 does a demurrer conclude 134
an argument which contradicts what appears on the 134
face of the record. If one pleads a re 15-15
and another pleads that will contradict it. 16
this be demurred to. Upon the same principle a 168
demurrer never suffices an argument of what is
impossible. Thus in replevin charging the beast 171
to have been taken in a parish - death, plead in a 171
county in the parish of which we are in the parish 171
of death. A demurrer never admits facts and 2-1
which as appears on the record are undoubted 226
proof. It is to suppose to make an argument 231
and escape of proof. Therefore a demurrer will not 231
conclude them. Thus if one pleads a release and 231
another demurres will not admit a release. 231
A demurrer does not conclude allegations which are 234
not material and immaterial - nor does it admit 234
immaterial allegations. Each side is to 234
take observed suggestions and cannot be denied in 234
a plea - they can neither be proved by him 234
nor by the other. 234 the party. A demurrer does not 234

200
It is in fact when both traverse the Pleas & Demurrers
branch a signed and sealed notice is sent. The rule then
should be tried first & if overruled the jury may be
after damages to the branch & that traverse at and
the same time. And if where one part of a de-
claration ~~is~~ is demurred to and another part is
traversed. The demurrer is overruled the plaintiff
enters a non-pros. as to the issue in fact and takes the
judgment on the issue in law only. It is a gen-
eral rule that there cannot be a demurrer to a demur-
rer - because a demurrer contains no matter of
fact. But it is said in *Lumberbach* that there may be
be a demurrer to a demurrer where the plea in a
statement is unopposite. I do not comprehend how
any one could have a plea in a statement said to be
unopposite differs from one that is unopposite. I mean
Indeed a party may always demur to a plea in
statement, or to any other plea containing no matter of
fact. And as there cannot be a demurrer to
a demurrer & for the same reason no special objection
plea or traverse to a demurrer. The other party must
must join in the demurrer - then & not till then
is the issue closed. The term demurrer in our Law
books is an abridgment of the English term
We usually omit the verification & in England there seems
seems to be no need of a verification to a demurrer
tho it is the general practice there to conclude one with a ^{liens} ~~verdict~~

Demurrer Judgment upon a demurrer is in all in-
 stances it is a complete bar to all further proceedings in
 the suit. It is also in criminal cases short of felony
 10-141 the right not allowed to be exercised by the
 141-142 defendant in a criminal case. But in crim-
 inal cases, and in civil cases, the defendant may
 142-143 demur to a declaration or complaint. The
 143-144 effect of a demurrer is to state that the plaintiff or
 144-145 defendant demurring may plead over. Chief Justice Hale
 145-146 said with respect to a demurrer in a criminal case that
 146-147 a criminal cannot be convicted unless he is
 147-148 guilty of a crime. A demurrer in civil suit
 148-149 demurs to a declaration & concludes in a demurrer
 149-150 the right may join in bar & have judgment entered.
 150-151 There are two kinds of demurrer viz General
 151-152 & Special demurrer. A general demurrer is one which
 152-153 avows no particular error in the declaration
 153-154 but is a negation - but a special demurrer is one which
 154-155 points out the particular error in which
 155-156 the demurrer is taken. To constitute a special de-
 156-157 murrer it is not sufficient that there be a mere
 157-158 denial of some of the facts but it must be specially
 158-159 or particularly stated. Thus if it be said the decla-
 159-160 ration is uncertain - it is not a special demurrer - he should
 160-161 say that the number is wanting or the facts are not
 161-162 sufficient - or that the venue is improper or that
 162-163 the time is not laid out here &c. and so a special demurrer.

It is said by the law that the Stat. Nons & Nourishing³⁰¹
of the said Stat. introduced special demurrer. Let her
But say that the law is nearly incorrect 708-
it is certain that special demurrer was in use 284
long before that Stat. & by the ancient authorities 267
it seems that demurrers were anciently all ge-
neral. Lord Coke who reported in the reign of Eliz. 240
says it is agreed rule to demur specially in all such
cases - in order to preclude all doubt whether the 88
defect be in substance or form. & special de- 284
murrer reaches all defects which a demurrer 185
may show and also others which a general de- 108
murrer does not. all substantial or material 17
defects for the words in the Statute are ex-
pressed in general as well as special demurrer - 624
but matter of form is reserved to special demur- 315
rer only - and if one demurs specially he may 3.5
take advantage of defects in substance as well as 212
those of form. the rule introduced by that Stat. 134-5
& further modified by that 485 Ann. is observed in this 1901
State & says all goods & persons in all the States in 808
this country. By that of Eliz it was enacted that defects 422
in form should be specially assigned in the demurrer 2
& the Stat. 485 Ann. which is adopted were as, but some 160
courts have extended the rule to certain particular de- 164
fects there pointed out. Having spoken of defects in
form & in substance & the method of pleading them to demur

Demurres. it is further to be observed, that as
 202 old law will not allow of a demurrer, it is not
 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

as to the defendant's plea. Plus & Readings
conclude a short point for the plaintiff at the
opening - it is a point in form only - in the next place 133
pleas - one more than the right - if still pleaded the 138-139
conclude he can take no advantage of the defect 331
I conclude from what I have said and say now and that lastly
if there be a plea wanting substance and verity 380
and if the allegation being said some material in it
allegation is omitted - it can be taken in demurrer of 134
under a general demurrer - as in the case of a minor 384
and of stating briefly in demurrer that the plea is
that the plea is in substance at that time when it re-
tains a plea is committed. If one party pleads a plea
plea as upon the face of the pleading, the appears
to be estopped from pleading - and advantage may be
taken of it under a gen. demurrer. I have observed - Law
and equity would that no advantage can be ta- 138
ken of a defect in form except by special demurrer 139
but it is to be observed that a special demurrer 13
reaches no other formal defects than those which
are specially assigned. A special demurrer does
not reach all defects but specially a signed and sealed de-
murrer. If on demurrer to a declaration, plea 139
motion is given for the plea no similar or concu- 38
rent action for the same cause and on the same
ground can be maintained before the same court
because the law does not allow of two judgments

Demurred - But where the plaintiff can show a material
 allegation he may maintain a verdict for the same
 cause & against the same party by averring the
 6th material allegation omitted in the first action.
 7th & this will not be inconsistent with the general
 8th rule. max. in the law that a man has no right to
 240-204 have the same claim twice tried - but here by
 a black. reason of the omission, a material allegation his
 7th legal claim is not in fact twice tried. So also if
 8th 81-82 the plff. may in a second action by bringing tres-
 pass for trover he may after a verdict against
 him in trespass bring an action of trover. & have
 observed myself the Gold that where there is a mate-
 rial omission in the declaration a judgment in
 6th 6th 6th this action will not bar a subsequent action for the
 20th same cause - yet it is further to be observed that tho.
 1st 1st 1st the declaration be insufficient if the def^t takes no
 1st 1st 1st advantage of it in any manner but pleads in bar
 1st 1st 1st the ground upon which the merits of the question
 1st 1st 1st are decided - in this case judgment for the plaintiff
 1st 1st 1st bars any subsequent action for the same. Thus if in
 1st 1st 1st trover, plff. sues to state a conversion & obtains
 judgment of damages, & a release & obtains judgment
 The legal merits of the plff's claim having been once
 tried - & the point settled all future actions between
 the parties in the same cause are barred.
 & also in cases of similar allegations & the whole dec.

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declaration unless the other part Pleas & Demurrers
be answered in some other way. & demurrers run
back to the beginning of the record & make the 406
first substantial defect fatal. Thus if the declara- 50
tion is defective in substance & the plea insufficient 100
then the 1st demurrer to the plea yet judgment will go 90
for the plea or if the declaration is good & the plea bad 110
in substance & the replication defective - on demurrer 80
or to the replication judgment will go to the plea 50
for my replication the plea may be overruled for a worth stake
is due. The rule on this subject says the Court must not 100
strictly correct as laid down in the books. It is a long 100
demanded maxim in the British law that a de-
murrer puts in issue every part of the record. Here
supposedly the court ought to render judgment
on the first point in issue. So the rule that the stake
plea attacks the first ~~substantial~~ defect 50
in the declaration there is an exception. Stake
that if in debt on bond for the performance of any 100
covenant, warranty or other condition, debt, reads an 100
insufficient & substantially defective plea & the 100
action or condition is signed no sufficient plea & the 100
action or demurrer to the replication shall have judgment 100
given. because the ground of the action does not
appear till the replication is made. The replication
is a kind of supplement to the declaration & contains
the conditions of the bond and until the condition

Demurrers are allowed upon the record the court should
 determine whether the facts are in issue or not. If they are in issue
 the court should not consider the demurrer.
 404 must be the fact.

One of the demurrers to evidence the proceedings are of
 a great deal of utility the judicial and important
 405 In certain cases where the pleadings terminate in
 a dispute in fact one party may take the exam-
 ination of the cause from the jury to the court by
 demurring to the evidence. A demurrer to evi-
 dence may always be taken where there is a prop-
 er foundation for it. It will be necessary, says the
 Judge, to premise that the relevancy of evidence is
 406 always matter of law to be determined by the court.
 but how far that evidence conduces to prove the
 point in issue is matter of fact to be determined by
 the jury. For relevancy of evidence is material evidence
 that is pertinent & connected to the point in issue.
 It is never proper to demur to evidence already in
 issue to the whole issue however weak it may be.
 407 This is a general rule that demurrers to evidence
 must be taken before the court is making addition
 of evidence on the other party. In the nature of things
 the facts must be first ascertained i.e. they must first
 408 appear on the record before a demurrer can be taken
 for matter of law a conclusion from matters not
 or demur over the whole and in and a the one in

as to the matter of the evidence. Hence finding⁸⁰
admission to the evidence of the facts shown in evidence
but denies that legal question is before the Court
that is, can the law which exists now, you will observe 184th
then say the law is that a demurrer to evidence is
can never be taken except where there is an issue 181-2
in fact and evidence is exhibited in support of it
that is, i.e. by the by however says the Court the
distinction between demurrer to pleadings and
demurrer to evidence is that the former can never 5th
or be taken after the issue is joined but demurrer
to evidence can never be taken until issue is 183
fact joined and evidence exhibited in support
of the issue. Where the whole evidence exhibited is
in one part is written it may always be demurred to 184-2
and the party exhibiting such evidence must
join in the demurrer or waive his evidence (to if 184
be chosen he may withdraw his evidence). as to the
general where any part is exhibited in evidence, is 8th
sorely, deems it likely they may always be demur-
red to & the other party is bound to join in the demur-
rer or withdraw them. But here the rule is
partly it is questioned by the old authorities whether
in case of a demurrer to it the other party must join
in the demurrer. It is said in Little's case that the
other party in such case is not bound to join in the
demurrer. But again I should as to the question

DEMURRER - the following distinctions are to be ob-
 served. First it is clear - that if one party pro-
 duces evidence to prove any definite fact the other
 party may by admitting the truth of the evidence &
 putting it on record - demand & compel the other
 party to join in the demurrer. Thus in *Price v. Hap-*
 144 *pe* evidence was exhibited to prove the negligent
 18 *keeping*. The other party may by admitting the truth
 214 of the negligent keeping demand & compel the other
 206 to join - when the question must come up before the
 court whether negligent keeping amounts to a conver-
 sion. Secondly it is to be noted that both cases agree
 190 that if one demurs the other should join in the
 5th demurrer - for if one demurs & the other does not re-
 murre & the other there is no reason why the
 should not be allowed to do so. Thirdly it seems
 to be generally settled that if the party's evidence exists
 240 & doubt the court will not grant a demurrer direct and
 100 without the adverse party by admitting the evi-
 dence (and necessarily the facts shown in evidence) to be true
 may then demand & compel the other to join. It will
 be seen that the court's evidence & the manner
 of its admission is of great importance. If it be not certain & explicit
 & direct it will be referring the office of weighing evi-
 dence to the court. But fourthly if the evidence
 200 is loose & indeterminate the adverse party cannot
 14 demand to it without admitting the facts which

which the evidence tends to prove. *Plens & Pienning*
 to prove. By leave & introduction of evidence as 2 H. 11.
 distinguished from certain direct & explicit 23,
 evidence which would take such as a will 24 & 25.
 may also not be taken to a point to be true - fact are 26.
 then & then according to the best of my recollection
 I think it is so & always have thought so - I must
 do justice to claim to such evidence as this & in
 this state of uncertainty - the court cannot look
 upon the record & judge of the certainty of evidence
 like this then can make no inference from it at all
 because here is no fact & no certain - no court can only
 draw inference from matter of fact. Therefore it
 will not do merely to admit the evidence - but the
 facts attempted to be proved must be admitted be-
 fore demurrer. A diligent keeping is not con-
 clusive evidence of a conversion - it is matter of 27,
 law - but if he will admit the diligent keeping - then
 then he may demur & compel the other party to 22-24
 join in the demurrer. Fifthly there is still a 3rd species
 of evidence which is the 3rd species from law, &
 indeterminate - it is circumstantial evidence 28, 29.
 If the evidence is circumstantial the party de-
 murring the other must distinctly admit upon
 the record every fact which the evidence tends to
 prove & every inference which may be drawn from
 the admission of these facts. Thus facts in the record must

Diminished - from a case where a woman had been
 burnt connected with the fact of the death being
 burnt does not amount to direct evidence that the
 woman is guilty of arson - the locus apud and
 the locus ad quem do not constitute a amount
 & among - but it is circumstantial evidence, & if
 circumstantial evidence is the evidence of fact
 which goes to prove the act in issue. In all those
 cases where it is competent, & even, nearly to de-
 mine it is the duty of the court to do so. But sup-
 pose in the two last cases the party claiming
 does not make the admission required and the
 other party does not deny the admission. The admission
 would ^{tend to} prove the truth & weight as well as the rele-
 vance of the evidence to the court and make the
 judges officiate as jurors - this cannot be and
 therefore the proper course would be to award a
 venire de novo. In 1787 our superior court deci-
 ded that in actions before single magistrates un-
 less the whole evidence on one part be written & the
 other part could not deny. But in our system
 with reason & regard to the rule here laid down
 & the reason of the rule suggested is a very im-
 proper one for a court of justice to award the rule on
 viz that it would otherwise tend to entangle the pro-
 ceedings. It is strange to suggest to a court to
 use such reasons - it might as well say that the

Bark

318

4/Dec

16

Ch. 10

200

Thirty

352

2/Jan

257

I have thought it would be the decision *Pleas & Findings*
 would now be required. Whether is the party who
 evidence being first written, but not in a manner
 to be found according to the decision required
 in the decision - these two rules say, with
 which I do not understand - I suspect they are a
 little inconsistent. The point in issue on demur-
 res to evidence is whether this evidence is suffi-
 cient in law to maintain the issue in fact. The
 point to be decided is not merely whether the evi-
 dence is relevant or not but also it is sufficient
 to support the issue. I should have observed before
 such a point that a demurrer to evidence must be
 taken to the whole evidence - for if he were allowed
 to demur to a part only, and take issue upon that
 part only he would always recover. A disadvantage
 can be taken of any defect in the evidence, whether
 the demurrer - but yet after the demurrer is de-
 termined or overruled advantage may be taken of
 any substantial defect by a verdict of judgment.
 Lord Mansfield says that a motion in arrest of
 judgment after demurrer to evidence overruled does
 stand upon the same ground as after verdict &c.
 But says all good I should think this to be the case
 upon general verdict the particular is different
 for which omission judgment may be supposed to be
 arrested - are presumed after verdict & have been presumed

Demurrer - where the facts are stated on the record
 and return to a certain thing. Now then suppose an
 original writ is a judgment on demurrer - here
 209y 1000. Since it is to such a writ & to return
 210 It appears to me that the demurrer in arrest
 211 stand upon the same ground as a plea in abatement
 212 or a plea in law or a plea in equity. It is a matter
 213 of course in the state whether a demurrer is a leading
 214 or a plea in law or a plea in equity. Under a demurrer
 215 or a plea in law. The party whose evidence is demur-
 216 red to may demand judgment whether he ought
 217 to give in the demurrer and the court will return
 218 showing the direction as to the delay when
 219 given in preference. Upon demurrer to evidence &
 220 judgment in demurrer the usual course is to discharge
 221 the jury immediately and in case the demurrer
 222 is overruled a writ of inquiry is to be awarded.
 223 Sometimes however the jury assess damages pre-
 224 liminarily. It is our practice in this state for the
 225 jury to be discharged & for the court to assess the dam-
 226 ages provided the demurrer is overruled - with a view
 227 to a writ of inquiry here issues. But improper evidence
 228 being objected to by one party and admitted by the court
 229 cannot afterwards be demurred to but it will be good
 230 ground for a bill of exceptions. Because otherwise the
 231 intervening judgment & final judgment would
 232 be in the same state & it would be virtually

312

demurring to the admission of the Plaintiff's evidence. The whole proceedings on a demurrer to the evidence is under the direction of the court and it is a course they may so far interfere as to prevent 15th a demurrer of this kind when frivolous. As to the legal mode of demurring to evidence the party de 160-341 must state the evidence and put it in a proper record & allege that this evidence is ^{irrelevant} insufficient 117 to support the issue & conclude with praying judgment that the jury may be discharged from giving 108- their verdict. This is where the 1st demurrer 168-4 but where the 2nd demurrer he concludes by praying judgment that the jury may be discharged and 169-4 that the 1st may be barred from having & maintaining his action.

Arrest of Judgment

An arrest of judgment is to stop or stay it on the ground made reduced to writing and entered on the 586 record. It is now to be understood however that 590 judgment cannot be arrested without a motion. 2nd The court will sometimes do it *ex officio* without 171 a motion. This motion is made usually after the issue joined tried & a verdict found - This however 208-4 is not universal for judgment may be arrested before verdict or after demurrer to evidence is overruled. Thus in case of a material defect in the declaration the clerk need not file it & make return and afterwards

Arrest of judgment - more in a west of judgment
 according to the English rule of law judgment
 is arrested for intrinsic causes only - i.e. such as
 appear on the face of the record - thus when the
 8th declaration varies from the writ and the writ
 295 were in contract & the declaration in tort.
 So also where the verdict varies materially from
 the issue. The rule in fact in such case is not
 found because it is impossible to render judgment
 upon the true issue. Thus in *Hardey* 10th says cer-
 tain words to have been spoken by the def^t - a bank-
 rupt & the verdict finds the words were spoken thus
 he will be a bankrupt. In the other hand if the de^f
 plea discloses no legal defence to action judgment
 300 if the verdict is for the def^t may be arrested - thus
 in debt if debt pleads not guilty and the verdict find
 305 that he is not guilty - the finding amounts to noth-
 ing for the finding the debt not guilty is not find-
 ing him indebted. So also if debt pleads always
 paid, to pay & the jury so find it will be good ground
 of arrest. The only difficulty on this subject
 consists in the application of the general rule to
 particular cases. This general rule the learned in
 law & strong reason has hitherto been a subject
 of much difficulty & perplexity say with
 students. I have usually explained the subject say
 310 by varying the rule so as to give a more

clear & distinct perception of its extent. Pleas & Pleadings
 The material inquiry on this subject is, for what
 causes or defects judgment shall be arrested & what
 not. ~~and~~ here it is a general rule that after verdict & full
 judgment may be arrested for any cause which af- 716
 ter verdict & judgment may be assigned for error. 2alk
 This furnishes no definite rule which we know 71
 what is cause of error - The question therefore shall 510m.
 occurs what defects are sufficient cause of error 174
 If the statement of the plea, title or cause of action being
 defective & that only, this defect shall be aided by 822
 verdict & of course it will be no good cause of ar- 141d
 rest. But if the cause of action itself is ground 184
 or right of recovery be defective - or be not stated at- 100p
 all - then it is not aided by verdict - but will support 825
 a motion in arrest. Thus in trespass, plea avers the 2alk
 day of the trespass - Verdict for the plea avers that 165
 that clerk has done an unlawful act & this to the 12.84
 damage of the clerk - The omission respects the state- 320
 ment and not the plea or cause of action itself - 2.12
 merely a defect in the statement. On the other hand 1028
 suppose plea states in trover that the clerk took a-
 way a certain horse - Here ~~it~~ does not appear, write
 record whose horse was taken. Was it the clerk's? he
 does not allege it to be his and the court can in
 no manner presume it. Here is a defect in the ti-
 tle or right of action and the verdict ~~is~~ not aid. in defect.

Arrest of judgment. It also in regard to saying of
the plb. he is a Jew. These words not being action-
able if the verdict is given for the plb. judgment
may be corrected for the defect, the bill is still sup-
portable. It also in action against the in-
dorsee of a bill of exchange if the indorsee or plb. if
ind. does not allege that notice was given the defect of
the non resistance of the bill of exchange by the
drawee - his title is defective - notice in such case
forms an indispensable part of the right and
an essential part too to his right of recovery. The
same distinctions apply also to detences, pleaded
to the debt - If the statement of the debt de-
fence be defective it is aided by verdict - but if the defence
itself is defective it is good cause of arrest. Thus
if debt pleads accord & satisfaction but omits the
day where the debt consists merely in the state-
ment of the defence and is curable by verdict. An-
other general & invariable rule is that any defect
in the plea is to support an arrest of judgment
must be such as would be fatal on gen. demurres.
So that if you can show that any given defect will not
be fatal on gen. demurres - it will not be sufficient cause
of arrest. This rule does not by any means hold con-
versely that what will support a gen. demurres will also
support an arrest of judgment. Thus if the declaration
often omits some facts or particular circumstances

without which the party obtaining the Pleas & Verdicts³¹
cannot say it was obtained it - or without which
which the party could not recover but which is imm³⁸
plied from the facts stated - the omission is aided
by verdict yet would have been ill on gen. demurrer⁴⁴
Thus in trover or trespass suppose the pl^t omits
to state value of the goods - there being no rule of
damages since the declaration would be ill on ge-
neral demurrer but a verdict would supply the defect
for if gen. issue is pleaded & verdict for the pl^t it
is obvious that the declaration is cured - it is presumed
that the pl^t has proved the value of the property. If
for a general verdict the court will presume that
all facts not alleged but which were implied from
those that were alleged were proved to the jury and
found accordingly - thus suppose no value was laid^{Pe 8.7}
taking the allegation - and also the findings & the jury³²¹
together - the rule of damages omitted has been sup-
plied and it is no cause of arrest - So also if payment³⁵⁸
be pleaded without alleging delivery of money the
court will infer after verdict that delivery of money⁴⁸⁷
has been made to the party. In other words the court
will presume every thing in favour of a verdict⁴⁹⁵
which in point of fact will warrant the presumption
that or in other words still the court after verdict
will presume every thing which it was necessary
for the party to prove in support of his issue.

Arrest of judgment is the other head the court in
 can't not after verdict presume in a case of that kind
 980 which in point of fact was not necessary to support
 them the issue. Since where the value was omitted the
 984 jury by their verdict find the rule of damages &
 with the court will presume that there was evidence
 986 of some value of the property and will affirm the
 988 jury verdict. So also if the day of the trespass be omit-
 810 ted it is not material if it is left by mistake lay-
 ing out future day - tho it be impossible yet it is taken con-
 812 sidered as if merely not recalled but supplied in
 the verdict - So if the grant of a reversion be pleaded
 814 without averring it to be in deed, the court will after
 verdict presume it was by deed the reversion or
 816 annual reversion cannot be granted except by deed. In
 such case it will be presumed that the fact of it be-
 ing granted by deed was given in evidence for a deed
 being necessary to prove the issue it cannot be sup-
 818 posed that the judge at nisi prius permitted inad-
 820 missible evidence & so the jury found no evidence
 1, 28 of a reversion or advancement is never presumed in this
 2000. If a declaration be void of substance & issue be la-
 2008 ken upon it & go and on the 21st the verdict is not re-
 2010 corded in the case for want of one that is in law
 2012 there being no cause of action nor substance of it
 2014 the court will not & cannot presume a cause of action.
 So also if any fact is omitted which is essential to

plth. right of action & not inferable from Pleas & Readings
those facts which are alleged & found - This fact so
omitted cannot be supplied or presumed by the jury 10^a
it & the verdict if found for the plth. is contrary to 15th.
will subject an award of judgment to be also given 16th
performance of a precedent condition & not alleged 17th 12th
it does not follow from the verdict nor can it be pre- 12th 17th
sumed that there was a performance. It is obvio- 18th 12th 17th
ble say, it would that the fact omitted is not necessary 18th
or to be proved, for the purpose of finding up - in the plth. 19th
but no judgment can be rendered to the fact omitted
is proved. If in an action for the return of a thing
done by a slave - if the defendant be omitted & the jury 20th
find for the plth. judgment may be arrested, for it is 21st
not inferable from the facts alleged nor can it be pre- 22nd
sumed by the court that the owner knew the slave to have 23rd
done mischief before. So in an action against the
indorser of a bill of exchange if the indorser (para 11th)
omits the agreement of demand & refusal - in notice
of verdict for the plth. - indeed these facts that are al-
leged & others inferable from them & the court will 24th
presume that notice was given. But suppose plth. 25th
states the demand on the drawer or acceptor & after-
wards the acceptor refused to pay - plth. he omits to aver
notice to the drawer - Here notice cannot be pre-
sumed for the court cannot presume any fact omitted
which in notice is due & necessary to the inference that the

arrest of judgment The court will never presume
 any one to be a party of that which would warrant the
 plaintiff in bringing the writ. And it is more than
 27 years since the writ of habeas corpus is necessary to
 28 the plaintiff to correct what he has done that the
 29 court will not presume to correct. And in the
 30 case of the writ of habeas corpus, the judge and the jury find in
 the 31st. Here the consideration is not of fact but
 of law. To warrant the finding in the 32nd
 is not necessary. And the writ of habeas corpus is
 33 a writ of right. And the writ of habeas corpus is
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 99 a writ of right. And the writ of habeas corpus is
 100 a writ of right. And the writ of habeas corpus is

to be intitled to judgment however but Pleas & Pleadings³⁵¹
to him, and he may be intitled to it shall not be ar-
rested. As if the declaration be defective & the plea & issue
in bar sufficient & verdict for the def. even the same 120
is taken upon the plea in bar - The plea in bar tho 133
unaided is not aided yet judgment shall not be arrested & bar
because the declaration is ill in substance. So also 151
if the declaration be good the plea in bar & replication 160
both ill the issue be taken on the replication 50
if the replication be true & verdict for the def. tho 70
the judgment shall not be arrested. On the other 113
hand there are cases where judgment is arrested 820
after verdict & rendered in favour of the party against 144
whom the verdict ^{is} given. This rule is founded on the same
principle as the last viz that on a question of law
the sufficiency of the whole pleading is brought before the
the court and the party who upon the whole record ap- 56
pears to be intitled to judgment shall have it. Thus 197-200
if the declaration is wholly defective - the plea & issue
in bar sufficient or insufficient & a verdict for the def. 120
if it appears upon the whole face of the record that the 113
def. ought to have judgment - upon motion in arrest 301
the verdict ~~for~~ the def. will not only be set aside but
judgment will be reversed. In the deph. - In the same
manner mutatis mutandis if the declaration be good
the plea in bar & replication be ill. But it does not fol-
low of course that the party at whose motion judgment

Replicaver - is arrested in its action in some cases. If the issue
 on which the verdict is found is an immaterial one
 and the court is not aware of which party inde-
 240 ment ought to be rendered a replicaver is to be awarded
 244 quod parte replicaverit. Thus if in default of condition
 248 the plaintiff at or before a certain time does plead say more
 252 at the day - or not - or the like - then not entitled to
 256 lawer judgment tho it be arrested - the court will order a
 260 replicaver - which may have had before if not at the time
 264 & since. In traverses an immaterial part of the issue
 268 in bar - & verdict on the facts the court cannot render
 272 judgment for the plaintiff because the issue was immaterial
 276 nor can they for the defendant if judgment is arrested but
 280 a replicaver will be awarded. But if the plea in bar is
 284 such insufficient & the plaintiff traverses the whole or only a part
 288 of it the court will not order a replicaver but render
 292 judgment for the plaintiff. A replicaver will never be a-
 296 awarded for a defect which cannot in any manner
 300 be cured by a ~~replicaver~~ ^{verdict} for there is no possibility of
 304 joining an immaterial issue on a plea or declaration
 308 radically defective - tho the declaration is good and
 312 the plea in bar totally insufficient if the defendant has a verdict
 316 the plaintiff may move in arrest of judgment but no re-
 320 plicaver will be awarded. On a replicaver being award-
 324 ed the pleadings must begin de novo at that stage
 328 in which the first variation occurred. It seems says
 332 Mr. G. that a replicaver is not awarded in traverses

of a, with tendering an issue on an immaterial point. There is no authority for this, but it is a mistake to say the court never grants a new trial, but the question is one of the council - whether we know any such case - to which replied in the negative. An immaterial traverse is not matter of form, but an immaterial issue is a radical defect. It is matter of form only in traverse because the other party may desert or abandon it. There was one case in which it is said that the traverse in an immaterial point is matter of form, but not the finding of this issue if one way is matter of substance. It is the finding itself which creates the difficulty - the fault is not so much in the parties pleading as in the jury. If the jury after finding the facts specially make a conclusion of their own, from these facts the court are not bound by it, but will make their own conclusion from the official facts found. The conclusion of the jury therefore is more susceptible of being done no good or harm. A replication is never awarded after a demurrer, but only after an issue in fact - for by a demurrer the parties put themselves on the court, to judgment & the whole record comes under their cognizance. The rule laid down in Levinson on this subject is altogether absurd. If a replication be awarded where it ought not to be - it is no ground for error, but if it be refused where it ought to be awarded it is sufficient cause of error.

524.

by finding more than the issue - it is *Pears & Pearson* 325
more in the issue. Thus where the question was whole
whether the case is in a set in his hands and 317
the jury find that he had a set in his hands and 317
rule however applies only to a set in his hands. 151
If a special verdict that only the evidence of the facts 316
but in some instances the fact the evidence - it is 67
causing arrest - & a verdict de novo shall be awarded 100
thus if in three the jury find a demand & return 40
the court cannot award judgment for demand & return
& refusal is but evidence of a conversion - it is not 77
a conversion per se. But the verdict is good, if the 518
jury find a fact which in law amounts to a conversion 20
(continued) as by finding that a set is sold or destroyed 100
the goods in question - or an unlawful taking. 56
There are cases in which the mode of taking is 518
may vitiate the verdict. Thus if there 100
are two or more counts in the declaration one good and 100
and another bad & the jury give entire damages 100
there judgment may be awarded not in any fault 100
in the pleadings for the declaration could be good 100
even upon demurrer but in the mistake of the jury. 100
And therefore it is not inconsistent with the rule 100
that any defect sufficient to support a motion in 100
arrest of judgment will be ill on demurrer. 100
The damages in the case of a set in his hands 100
by distinct damages, no each count & the jury may return three 100

arrest of judgment - Thus, with reference to damages, requiring
 that one for injury, & another for death & makes
 two distinct counts to the same cause, & it is
 done. a verdict of entire damages would be correct; arrest
 of judgment would be correct, & yet no error
 would be in fact, for even on the verdict the verdict
 may be ascertained from the record, & as to ap-
 plying to the count & not to the verdict. But the verdict can be
 amended in no other than the proper order. This
 rule as to entire damages in case of two counts is of
 no great practical use in this state except as it
 furnishes a useful principle. In
 this case, if the declaration consists of two ^{or more} causes ac-
 tion & there are several distinct counts, one
 for each cause - judgment may be arrested in each
 of entire damages - Still if the different counts
 are all for the same cause, action - be corrected when as one
 cause, action & is the same count - as for cal-
 lings one a "lie" & another - continued words - words
 spoken at the same time - here judgment will not
 be arrested. Here it is presumed that the jury found
 & R. only for the same. In all these cases there is no error
 & no error is there - there can be no objection. Judge
 must be never arrested, or an inefficient verdict.
 (88) The rule above is not applicable to in-
 dictments and other criminal prosecutions. If
 an indictment - information is returned

proceeding contain two counts one Pleas & Verdicts
good & the other bad. There is no occasion for an *alk*
arrest of judgment. For the jury do not propose to 584
the remedy or punishment but merely find guilty, *alk*
or not guilty. - 585

These say all these are the principal the not all. Does
the cause of arrest of judgment in Eng. for intrinsic 703
sic matters. But in Conn. judgment is arrested
many extrinsic causes - as for corruption or mis-
conduct of the judge, asking the jury to give a 642
verdict - finding a verdict by casting dice - by
cards or other chance game - misbehavior, the 13
jurors, tampering with them - or using 155-4
undue influence with them - so if one or more of
the jurors be interested - or related to one of the 15
parties a party & an or friend & nephew & son & daughter
have given rise to a rule that if a juror be re- 202
lated to the bail or that he could not be a juror in ac-
tion by or against the bail - he cannot be a juror 184
in an action by or against the principal. So also 200
the having been arbitrator or counsel - or having 166
given an opinion in the case - is ground of arrest
or challenge. But generally as to the incompetency of 153-4
jurors - is that if the incompetency be great the jurors
impartiality and would be good cause of challenge
it is good cause of arrest of judgment - the relation
are excluded on the ground of a presumed bias

error of judgment that negligence which arises
 from mere mistake of fact is no cause of
 187 arrest. Thus to our line it is settled that even
 188 error shall be a technical one - the not having this
 189 qualification may be ground of disqualification but not
 190 of arrest of judgment. Still further the two jurors
 191 incompetency does go to his impartiality yet, this
 192 ground of partiality were known to the party be-
 fore verdict judgment will not be arrested. If
 193 one of the jury has tried the same case or issue
 194 in the court below it is no cause of arrest for the
 195 party is supposed to know who were the jurors in
 196 the court below - And therefore it is incompetent
 for him to aver that he did not know, &c.
 197 error was a juror in the court below at the trial
 198 The having given a previous opinion as to a
 199 been observed is cause of arrest. But a previous
 200 opinion given of a principle, &c. involved in
 the verdict is no cause of arrest. - Surely any pro-
 position arise in a cause, &c. of which he will
 not - nor can this be - it is a most impossible
 for one stand neutral when a plain question comes
 up to his view. - The bias consists in forming the
 201 opinion but the disqualification consists in his nar-
 202 rowly expressing his opinion on the matter of fact in
 the question. It has been decided by our superior
 court that if a juror has given a previous opinion

on the merits of the question it was *Plans & Proceedings* ⁸²¹
good ground of a writ - since this decision in *Conway*
on the writ had, for a time, that he had no right
in or against any person in the matter. I
think however says in *Conway* that there is a rule
in the rule to protect dangerous witnesses -
too lax & I hardly think it is correct (omn. excep. mai.)
But altho judgment may be reversed for extrin-
sic causes yet the court have no right to enter in-
to an examination of the merits of the matter.
It is said in *Wright v. Taylor* that on motion in a re- ⁵¹²
view of judgment for misconduct of the jury a re- ²⁸⁸
view is awarded - this is a mistake - he seems
to have confounded a writ of *coram vobis* with a review of
the case - there can in such case be no review of re-
view - but the writ made in *Quarrenden v. Quarrenden*
re view. This in England judgment is reversed - ²⁹¹⁻²
principally for influence caused - but it is true also said
in *Conway* as well as here that *coram vobis* may be at ²⁰⁵
least sometimes for cause not appearing in the writ
the writ is not in the review. But by reason of
of the different practice of proceeding here & in Eng. at
the result, the rule will come under the other ⁴⁴
rule. As on the writ being suggested to the judge that
at nisi prius in the writ judgment may be at ²⁰¹
review for the misconduct of the jury this made known in *Green*
to the court in *Conway* & mention this here as well said ²⁰

Arrest of judgment not because it is applicable to
 from courts in the same manner nor are there no visi-
 10 ous, but the verdict is entered in bank by the jury.
 20 And in the cases in England the same proceedings
 30 were used in bank as are now practiced & are
 40 now. In these cases judgments are arrested merely
 50 on a point of the rule & not of the law. This prac-
 60 tice however is not usual & even the Court it is hardly
 70 harmonious with the principle of the English law
 80 and the organization of these courts. It is usual in
 90 cases of misconduct of the jury and other extrinsic
 100 defects in the verdict to make a special statement
 110 of the facts under a motion for a new trial. On judg-
 120 ments being arrested no costs are given and at the
 130 60-70 ed on either part for the party moving and arrest may
 140 572 have occurred & a new trial be granted. And
 150 60-70 if the motion in arrest be overruled costs are not as-
 160 1100 awarded. It is also upon a writ of error he shall re-
 170 572 cover no cost. There is a authority in the English
 180 200 books to this effect but this is a universal rule here.
 190 200 The reason of the rule does not obtain where the case
 200 300 is assigned to a new trial are extrinsic - nor when
 210 805 the cause of arrest is taken merely in the verdict - After
 220 the jury moving in arrest of judgment shall be in-
 230 1000 liable to cost. It also the rule will hold in Conn.
 240 where the issue in fact is tried by the jury - nor even
 250 if the rule apply - where there can be no motion in arrest of judgment.

In Eng. motion in arrest of judgment (Necessitating)²¹
must always be made within the 4. first days after
of the writ, according to m. It is said in 595-49.
Doubtless that a motion in arrest may be made at any
any time before judgment is entered up. - In Conn. the
justice must be given at the time the verdict is ac-
cepted & the motion to be made out in writing and
delivered to the adverse party or the clerk within
24 hours after the verdict is accepted - and is ac-
cepted. as to the form of a motion in arrest -
it is this, And now the deft in court after verdict and before any
judgment entered thereon moves the court that no judgment be ren-
dered because he will the declaration & matter therein contained
be wholly insufficient in law to warrant to render judgment. And if
the affirmance is correct & judgment entered the same is
the same Motion is sustained.

New-Trials

380
New-Trials

can a petition for a new trial be in law and
always by a motion - this motion is a rule upon
the adverse party to show cause if any he has why
a new trial should not be granted. The granting
of the rule is not the granting a new trial but only
to summon the adverse party to show cause why a new
trial should not be had. - If probable cause be shown
either by affidavits or inspection the matter stands
at this point - to the next in term he sits in
Westminster Hall the rule will be made absolute
and the judgment given at this point will be sus-
pended (ie the judgment will not be affirmed by the
court in bank. But on the other hand if sufficient
reasons be made the rule absolute does not appear
it is discharged and judgment is entered up.
in Eng. this motion for a rule must be made before
made before judgment is rendered - because only 700
new trials in a new trial. In connection with the
application for a new trial is petition-wise and al-
most always after judgment is rendered and ac-
tually not till the term next succeeds that in
which the first trial was had. The reason why the
application for a new trial in this state is by peti-
tion is because formerly our courts of law had not
the power of granting new trials - but new trials were

[illegible]

506 New-Trials the debt in new trial shall be as a rule. It is also
 507 if the Plaintiff for a new trial where the damages
 508 given are not the Debt are made according to the Debt
 509 and showing the court will not grant a new trial
 510 & send the matter once discharged the rule where the
 511 damages were only for the Plaintiff's & his own injuries
 512 the new trial is not granted. (See the case of the Plaintiff). The court
 513 will not grant a new trial for the Plaintiff's injuries
 514 but it will grant it for the Plaintiff's & his own injuries
 515 trial is decided only by the court. The court may
 516 impose conditional terms upon the Plaintiff in
 517 all cases requiring a new trial. Thus where he who
 518 sues for a new trial has the power to discharge
 519 the other party in the Plaintiff's case & to defend
 520 the said Plaintiff in a new trial where the court
 521 may grant a new trial on condition that he will
 522 disclose those facts & where a new trial is the terms
 523 are not imposed upon him. So as to the new trial
 524 him to disclose facts upon which the Plaintiff is
 525 a new trial is not to be granted. The Plaintiff
 526 of facts is not to be granted. The Plaintiff
 527 who sues for a new trial is not to be granted
 528 a new trial only on the evidence he has the
 529 right to be granted to the other party. The terms
 530 imposed might be required. If the ground
 531 of the application for a new trial are sufficient
 532 then that fact on the trial the information upon

which the court grant a new trial is to be ⁴³viewed
taken from the reports or notes of the judge at
Edin. but if the matter is extrinsic such as
could not have been known to the judge at Edin.
it is to be decided by affidavit. This rule does
not apply to this country where the objections
to the verdict on a motion for a new trial are
considered by the same judges who heard the
whole trial. It is however in certain cases ap-
plicable - as where upon a petition for a new-
trial before the superior court the question is re-
served for the decision of the nine judges - it is
very necessary that there should be such a re-
port or statement signed by the Chief Justice
for witness will be admitted to testify on terms
of what passed in the court below. It is a gen-
eral rule that even a not predictable of refus-
ing a new trial. But there is a great & con-
siderable case where it would not be a mere matter
of discretion of the court - but of strict right - sup-
pose, say, a new trial was granted which
would be manifestly wrong & it could not be admitted a new
trial - here I conceive a writ of error would be pre-
dictable of the decision - that if one is indicted &
acquitted & afterwards the Attorney General moves
for a new trial and it is granted - the person so
indicted may be brought to have a writ of error

Two views - the power does not militate with the
 rule as it ought to be laid down. That error is
 not predicible of the reversal of a new trial - tho
 it would seem and strict justice demands that
 that error may be assigned for a decision on a mo-
 tion or petition for a new trial. The power of
 granting new trials in this state does not ex-
 tend to single prisoners of justice.

Still less to the origin of granting new trials it said
 to be established that it was done in the time of
 Howard the Chief in cases where the jury mis-
 behaved then & then was the only case -
 where new trials were granted till the protection
 of Linnecott - at this time a new trial was
 granted for excessive damages but it was granted
 on the presumption of the misbehavior of the jury
 Since this period new trials have been granted
 for a variety of causes & has of late more been
 customary to grant new trials even after a trial
 at bar (i.e. before the whole court) before the whole court
 Once it was formerly held that after a trial in bench
 it before the whole court a new trial was no new
 trial could be granted because the court is sup-
 posed to direct the jury as to the law & verdict.
 It has since been decided - and a new trial
 may be granted after trial at bar as well as after
 any other trial. Trial at bar now takes place

except by special permission of the court. & ²³⁶ ~~new~~ trial.
It is now a general rule - and a maxim that in all
all cases of sufficient importance a new trial may
be granted if it can be made to appear that in- 385
justice has been done at the first trial. There often
are cases however where new trials have been 388
granted tho the circumstances of the case were then
known. Thus where one having paid up a debt 395
took a receipt but by accident lost it & a suit with
was brought for the same debt & recovery had 608
against the debt - Lord Kenyon said he has often
known more motions for new trials dischar- 2005
ged tho the receipt were afterwards found 1800
It is said it be a general rule that a motion 305-605
for a new trial cannot be made after a motion for
in arrest of judgment except where the cause 758
of the new trial was unknown at the time of
the arrest of judgment. There seems to me
some reason to be no reason at all in the world
suppose as the motion is in arrest of judgment
is overruled - must either partly there can be no
objection from moving for a new trial - On the
other hand as there seems to be positive
reasons for allowing a new trial even tho a motion
has been made in arrest of judgment. Judgment
may be arrested it is allowed on all hands after
a motion for a new trial has been dismissed & all

New Trials & see no reason why we were a motion in
 647 talk arrest of judgment ought not regularly to be
 647 granted - & this to prevent the necessity of gran-
 647 ting a new trial - as will be the case if the mo-
 646 tion is granted is supported. It has been held that
 646 where several verdicts in the same suit have been con-
 646 sidered as part of them convicted, & part acquitted
 646 no new trial can be granted except all the rest in
 646 the suit join in moving for a new trial. It seems
 647 to me, says our friend that this is an increased
 647 rule great injustice is liable to be done by it &
 647 it seems impossible that such should be the con-
 647 sistent with the general principles of the
 647 common law. This rule is very inexpedient & and
 647 seems to be derived from that one or a part of
 647 the rule may join in the motion for a new trial.
 647 talk that the reason of course of a trial - want of legal
 647 notice to the other side - this however is a general
 483-488 rule & must be qualified by the facts of the case and
 647 defense. This is a review of all exceptions and motions.
 647 But where a debt has no due notice nor pleads. I must
 647 not say, and should the case is such that the court cannot
 647 exercise its discretion. But the debt is entitled to be
 647 heard, & he has an unquestioned right to be heard.
 647 I doubt says he whether the court can be with propri-
 647 ety to use a new trial tho the matter in dispute were
 647 never so small consequence - even when a such a case

In Eng. the 12th must have 13 days notice *Stevens v. Smith*
In our Superior & County courts he must sometimes
have 14 and sometimes 12 before the first day
the session in which the action is to be tried.
Another cause of new trial is a defect or mistake *Method*
of the judge before whom the cause is tried as when *119*
he is interested - or where he has admitted improper *Method*
or evidence or excluded admissible evidence - *201*
or where he has mistaken the evidence or misdi- *45 R.*
rected the jury. But tho the admission of improper *753*
evidence is cause for a new trial yet the incompeten- *118 R.*
cy of a witness not objected to at the trial is not a suf- *827*
ficient ground for granting a new trial even tho *5 Bae*
the fact constituting his incompetency were unknown *244*
at the time of the trial. But our superior court *18 R.*
in the year 1776 granted a new trial upon this re- *717*
ason ground & a very strong case it is too for the evidence *partake*
which was afterwards found to be corrupt was writ- *day-*
ten. - The defect or incompetency of one of the jurors *5 Bae*
who tried the cause is good grounds for a new trial *245*
But if this incompetency were known to the party *Method*
applying for a new trial at or before the proper time *34*
for challenging jurors no new trial can be granted *11 Kent*
but if the party did not know of the incompetency he *20*
shall have a new trial - *Application for a new trial* *11 Bae*
in such cases is in this state concurrent with a mo- *tion*
tion in arrest of judgment.

New Trials

the case in which the charge is proved is a good ground
 to set aside the verdict - and if the jury were to charge -
 that the case is not proved - and the jury were to find the verdict
 guilty - it is not necessary to the purpose of saying good grounds
 for a verdict that all the jurors were in agreement - but
 that it is enough if one only of them were so. The
 opinion of one is as sufficient to establish the verdict
 against the whole. It seems that in our early times
 a verdict was given by the jury was not required for
 the conviction of a man was never to be convicted or degraded in
 any way - but it was the duty of twelve men - yet as
 probably the jury used to consist of as many that it
 made only a majority of the whole it could not be other-
 wise than that the unanimity of at least 12 were
 required to convict or degrade a part in a verdict.
 in the case of the slave now the there be men or 12
 jurors in the whole yet are they required to be u-
 nanimous in bringing in a verdict - & unless they
 are unanimous the verdict is bad & will be good
 cause of a new trial. But as a verdict has been re-
 quired to be the purpose of creating the necessity of this
 rule - or allowing the majority to come into court
 and if one of them do not there is a verdict and in such
 a case it is not the duty of the verdict but to be good
 and if it is not after a verdict is entered to be a
 verdict to create the verdict is not necessary to it

In England when the jury retire, as the 12 jurors
forming a verdict they are lodged up in a room called
by them the "retire" & they are the better in it than
behaviour in them to eat or drink & tell the verdict first
without verdict - The verdict is given in a room
taken up with by the judge & the jury & the
they is it at the expense of the party, for when
the, afterwards, the verdict is given in a room
where a witness or juror live & much is
more convenient to them & is only cause of reco-
that when at the expense of the party.
This says the judge is a kind of legal coercion but in
the purpose of relieving the jury from the burden
of being without food or drink perhaps from the judge
argument of the case one day till it is the verdict
or the next week they are in some cases allowed to
live in a room & out of court. It is also
in some cases in the case. It is a secret
side of substance for them. The jury verdict is not
to be recorded - it is not binding - and it may be
reversed. The verdict given in open court (ie) tho a brief
verdict be given in - the jury may afterwards give in
a verdict in open court materially different from
the first verdict. A jury verdict may however
have one good effect for the the jury afterwards in a
a first verdict do eat or drink at the expense of one
party - the more verdict is not vitiated and it is

New Trials cannot intervene if the verdict is correct. . .
 . . . et primo verdict is not however allowed
 145 in all cases - generally it is not allowed in those ca-
 ses where the personal appearance of the deft is re-
 150 quired for conviction as where the act for the offence
 155 charged is liable to be performed with accuracy - which
 160 gives the jury an important part - for in all these
 165 cases the act must be done in person. But
 170 where the utmost precision may be a line - here the
 personal presence of deft is not required & a jury ver-
 dict may be given. - In law we know no more
 thing as a jury verdict. - Indeed we have no need
 of such verdicts - for we are not confined to nor
 do we observe at all the English rule for accepting
 175 the jury. The jury here is where they have a right
 to - & eat and drink what they please. I think says
 180 Law that good our practice is much to be done - in many
 185 cases where the public justice is raised the jury
 190 will be liable to be biased in their judgment for
 195 being allowed indiscriminate conversation with
 200 those not personally interested in the suit. It is
 205 said in Law that the jury may in forming their
 210 judgment take into consideration facts within their
 215 own personal knowledge & not exhibited in evidence
 220 uttered on trial. This is clearly not law - No juror can in
 225 any way exhibit evidence of facts to his fellowes within
 his own private knowledge. He may if he chooses

in open court state facts - for he can here be
 cross examined. And in, performance of the same
 principle - The jury have no right to re-examine
 in private a witness who had testified in open court.
 And have they any right to ask him what he
 did & why in court - for if the jury undertake to
 to exhibit testimony & matters are, which would
 judge - or re-examine a witness it is good cause
 of a mistrial. And in Eng. the jury cannot with
 out permission of the judge take out with them any written testimony actually ex-
 hibited in open court. It is said however that
 however that if the written testimony is evidence
 on both sides it will not vitiate the verdict. But
 tho they take it with them in private without the
 judge's leave. - This dictum of Lord Stolt says 1012. 1013. 1014.
 Gould is in accordance with & more to be observed - 1015.
 says in the rule that it is in all respects proper & that
 see no reason for the qualification. The criminal
 may be stronger on one side than the other and indeed
 seems that the only reason of the qualification may be
 correct apply to the exclusion of this and the ex-
 clusion of that on one or the other side. Notwithstanding
 the rule is so in Eng. it would seem that each par-
 ty has a direct right to deliver written testimony
 to the jury after it has been exhibited in court &
 accordingly in this state instead of observing the

New. Was English or is our jury are allowed to take with
 them such evidence as they see entitled
 to take without a written paper of the evidence
 1. 100 either party. But if the jury take with them a
 1. 105 any other evidence not admitted in evidence of
 the verdict is null & void. There can be no doubt
 1. 110 it is sufficient for a defence verdict. But this
 1. 115 the jury are guilty of a mistake - the person who
 in a witness is not competent to testify to the mis-
 1. 120 conduct of himself, for the purpose of making a new
 1. 125 trial. I cannot understand the ruling. I think you
 1. 130 say the verdict. It was not formerly so & I see no
 reason why it should be so now any more than
 in cases in similar circumstances. They are not
 excluded from testimony on the ground of their be-
 1. 140 ing the parties. Indeed they could not be ruling
 of course for a breach of the oath of office & not in-
 1. 145 jury but because their testimony would be self-
 1. 150 incriminating. In all these cases of mis-
 1. 155 conduct, the law is a matter in arrest of judg-
 1. 160 ment & is concerned with a new trial.
 1. 165 Another cause of a new trial is the jury finding
 1. 170 in a case of verdict when directed by a court
 1. 175 to find a certain verdict. And the reason why
 1. 180 the verdict is null & void is the court is wrong
 1. 185 and cannot tell from a record & direct a new
 1. 190 trial. The record is not a new trial & is not a

But if the court do not direct the jury New. Trial
to find a special verdict then finding a gen. ver-
dict will not support an arrest for error 515
trial but advantage must be taken for arrest 516
of malpractice. It is strictly speaking not the
finding of a general verdict which lays a founda-
tion for a new trial - but for finding a verdict
not according to law. A verdict found contrary
to evidence is both here & in England sufficient
cause of a new trial - it is said by Scott that this
is not a cause or ground for new trial here - & so the
court formerly held but it is now stated that a new-
trial may be granted for this cause. The court will
not in cases grant new trials where the inclination
of the court were in opposition to the verdict. This
may be laid down as a rule on this subject that when
in the opinion of the judge the verdict is clearly con-
trary to the weight of evidence - where there is a dis-
crepancy or preponderance against the verdict on account
of its not being according to the evidence exhibited
here a new trial will be granted. It has been stren-
uously argued that however outrageous & preposterous
the verdict is the court ought to accept it as the con-
clusive evidence - that it is the province of the jury
& not of the court to judge of matters of fact and the
weight of evidence - that the court by granting a new
trial assume the province of the jury - in fact substitute them selves

New Trials So altho it may be said that all the weight
 410 the court have in this business is the weight of re-
 415 sulting from the matter to another jury - & where the con-
 420 sideration is against the weight of evidence in the
 425 case - it is no more than a reasonable doubt in the
 430 mind of the jury - & by the question of a jury
 435 of the jury give a verdict in a reasonable manner
 440 a point of law or as it is frequently expressed a point
 445 law - a new trial may be granted - & the jury is not
 450 to be compelled to return a verdict, & show what con-
 455 sideration has been given from certain facts. You will
 460 La Hay find many other cases where the Court
 465 have refused to grant new trials on this account
 470 but it was always where the point of law, or in some
 475 the jury made some mistake was significant, & another
 480 case. New trials are never granted merely because the case
 485 is hard and unconscionable on the part of him who
 490 makes a new trial - nor is a new trial to be gran-
 495 ted if the plaintiff is entitled to nominal damages &
 500 the defendant has small damages. In certain cases the
 505 condition of damages given by the jury is can refer
 510 to a new trial - but the rule holds also as to con-
 515 tract - or rather in action on contract where there
 520 is a clear rule of damages given - as in action
 525 on bond or bill of exchange. Thus suppose the jury
 530 should say the Plaintiff was not entitled to interest - or if
 535 they should say that the Plaintiff was entitled to interest, & that they are obli-

But tho this is common in action on contract. ²⁸⁴ *New trials*
yet it is not in action on tort. *See* *Went. & Bailey* ¹⁸¹¹ *same*
mailed *prosecution* &c. Here new trials are not ⁸⁵¹
granted for the smallness of the damages. Because ¹¹
there is no certain rule of damages. However, says ⁴²⁵⁻
the *gould* & suppose there may be a case where the ¹²⁵⁰
smallness of damages would be a good ground for ¹²⁸⁷
a new trial - & it is said by the court in a certain ⁸²⁷
case that there is no reason why this rule should ¹¹⁶¹
not obtain in action of tort.

Excessive damages is a good cause of a new ¹⁸¹¹
trial both in action on contract and in tort. It ⁶⁰⁰
was formerly a rule that a new trial could not be ¹⁸¹¹
in action on tort for excessive damages - this rule ¹⁸⁴⁶
however, has long since been exploded. It was formerly ¹⁸¹¹
supposed also that a new trial granted for excess ²⁷⁷
iveness of damages was so granted from a presumption ¹⁸¹¹
of partiality in the jury - but this idea is now ¹⁸⁶⁵
exploded also. In Connecticut such a case as this ¹⁸⁵²⁰
has happened viz. a verdict in book debt - laying the
damages for 100\$ when in fact the debt was only 50\$
The *Plff* saw the debt and told him the debt was only
50\$ for which he brought his suit - the *def* in ask *de-*
fault - and the *Plff* took judgment for the whole 100\$
here a new trial was granted for excessiveness of dam-
ages. In action for criminal conversation with the
Plff wife - no case is to be found of a new trial being granted

1800. It is true in the last case loss of property may in some
cases be ascertained - but smart money as it is cal-
led is never estimated by any rule. Justice Buller
has said that there may be a new trial in such cases
& Lord Tenterden expressed some doubt as to the contrary
opinion. There is also another kind of action
where it has been supposed no new trial can be granted
viz. in excessive damages where the latter brings
an action per quod servitium amittit for the se-
duction of his daughter - tho in ordinary cases
new trials would hardly be granted
even when the damages were outrageous - yet I see
no reason why a new trial should in all supposable
cases be denied. This action seems to be somewhat
unfrequent tho it is a nuisance. No case is to be found
where a new trial was granted in the action of Har-
bour for excessive damages. I do not know myself of
any case where a new trial has been granted in this
action except for the misconduct of the jury. How-
ever it seems to be pretty well agreed by the court in a case
intituled that a new trial may be granted for excessive dam-

Lord Campbell has said that no restriction
 ought ever to be granted for excessive damages ex-
 cept where the damages are at the first trial
 excessive. He has always been very strenuous in
 opposing new trials since the time he was upon
 a judicial bench - as the violation of the
 magna carta in that the court substitute them-
 selves for the jury. But Lord Campbell never objected
 to a new trial where the verdict was given against
 evidence. What grounds would he have had if Lord
 Campbell go on here but a mistake of the jury. What
 grounds could he have come to a new trial when 2 Will
 excessive damages were given? It is suggested 235
 clearly on the ground of a mistake of the jury in other 244
 cases. Lord Campbell in such cases took the part of 254
 a politician and a statesman rather than that 113
 of a judge - he was a high officer & a firm 123
 of the administration at the time and what is 123
 still more observable when Lord Mansfield took one 57
 side of a question he would take the other 2 Will
 If by any mistake in contribution the jury give 232
 more damages than the law than it seems to have 123
 it is cause of a new trial but if the jury will in other 507
 court release the case no new trial will be granted.
 And saying a mistake of the council in
 pleading a wrong plea is a sufficient cause of a
 new trial. This is said in an Act providing for

New Trials necessary for this case - *misdirection*. It is not
 200-201 stated in your case that more *misdirection* was
 201-202 required of itself sufficient cause for a new trial.
 202-203 But a new trial was once granted when it was
 203-204 ascertained that the counsel & the judge at nisi-
 204-205 prius had mistaken the mode of pleading a re-
 205-206 sponse to the same apprehension of the legal ob-
 206-207 jection & not a plea. It is much more necessary
 207-208 in Eng. to grant a new trial, or misdirection than
 208-209 in Am. - where the deft can plead & let the defence
 209-210 fend in Eng. under the 4th Ann. the deft is allowed
 210-211 to plead any number of distinct causes of defence so
 211-212 that if one of them should prove to be insufficient
 212-213 he may rely upon the other. It appears that the
 213-214 neglect of the counsel in not managing the cause
 214-215 properly is no good cause of a new trial. But
 215-216 any one could & should very much abridge the
 216-217 Court would grant a new trial on the grounds
 217-218 mispleading when the plea to be pleaded at the se-
 218-219 cond trial appears to be unconscientious - as if one
 219-220 at first pleads infancy & upon failing in this, then
 220-221 moves for a new trial that he may plead *non est*. I
 221-222 presume say it would the court would not grant
 222-223 a new trial. And in one case the court refused to
 223-224 grant a new trial for the purpose of giving the deft
 224-225 an opportunity of pleading *non est* - where application
 225-226 is made in time for a new trial on the grounds mentioned.

the party applying must state in his petition New Trials
the grounds of defence which propounds to be tried in a second
trial - and also that he is able to prove the matter of
defence thus pleaded - otherwise his re-conviction will be
dismissed. - That a material witness not being present at the
first trial from some misfortune or inevitable accident - as age or sudden illness.
But the party moving for a new trial for this cause must in
Eng. make affidavit of what the witness can testify to - and
in this state it must be stated in the petition what the
witness can testify to - and his deposition must be produced in
court - or the witness himself must be produced to testify
viva voce what he can state relevant to the case in hand.

The absence of a material witness where his absence was
obtained or procured by the commission or fraud of the party
against whom the testimony would operate - it is good cause of a new
trial - but the wilful absence of a witness or his absence
through the neglect of the party moving for a new trial is no
cause of new trial - but in case of wilful absence the remedy
lies over against the witness - for in such he is liable to all the
damages accruing to the party in whose favour his testimony
went. - But absence of this kind may be cause of a new trial
if a new trial will more be granted for the absence of a witness
whose testimony the party might

New Trials - never said to us by the difference. Surprised
 14011. was not the introduction of new evidence.
 14012. evidence is in the case ground a new trial. But
 14013. here as will be presently mentioned it is otherwise
 14014. that if a witness makes a mistake in giving
 14015. testimony in any material fact it is in itself no
 14016. cause for a new trial - for this reason on the court
 14017. says that it would be dangerous to open too
 14018. wide a door to permit to grant a second trial
 14019. after having heard the evidence in the first. For by
 14020. this time is given to the other party to mould and
 14021. shape his evidence according to the exigencies of the
 14022. case. Our courts have in a number of instan-
 14023. ces held that a new trial is granted new trials when
 14024. a material witness had mistaken the facts given
 14025. in evidence the first trial. One case I remember
 14026. was the when I first came to the bar between Cousins
 14027. & Caldwell where a new trial was granted for two
 14028. reasons one on the ground of surprise and the
 14029. other on the ground of mistake in the witness
 14030. The witness under the consideration of the witness
 14031. were that we did not know as he was not but
 14032. as you would more surprise and testimony
 14033. seems to me too indefinite a cause upon which
 14034. alone the court should grant a new trial. Another
 14035. ground for a new trial is to be in the discovery of
 14036. new and material evidence after the trial

said it is said in one case is a demand of a new trial
 material in this. But the current of authority is more
 the other way and a new trial case was a day or
 two since. In a case where a receipt was
 being lost - the Pth recovered for a debt once paid
 upon the receipt being found - a new trial was re-
 fused. The reason has been said why in Eng.
 new trials are not granted for this cause is be-
 cause it gives the party an opportunity of ma-
 king - forging - moulding & coloring his evidence
 to the exigence of the case - but in this state says
 all good I know not that we have experienced
 any inconvenience from admitting new trials on
 this ground. But our courts will never grant
 new trials for this cause unless the evidence dis-
 covered is clearly new and unknown at the time
 of the first trial - nor will it even then if the evi-
 dence is not material. - The petition must state briefly
 the substance of the evidence in the former trial &
 the names of the witnesses from whom new evidence is to
 come - and the particular facts furnished by
 this evidence. It is not material that all the ^{new} wit-
 nesses should be named in the petition but some
 must be or the petition is bad and may be dismissed.
 If a cause is lost by the testimony of a witness ille-
 gally informed - this fact not being known by the
 party against whom the evidence is exhibited

Survival it is sufficient ground for a new trial. There
284. In England, it came is reported in which when
after the first trial the party, in opposition to the act
of who was about testifying against him, he had
not been convicted for stealing a silver tankard
the witness replied in the negative and he was ad-
mitted to testify - afterwards a motion was made
for a new trial on the ground that the witness, who
had been convicted of stealing a tankard - but the court
refused a new trial because this fact was known
or might have been known by recurring to the re-
cord. It was anciently the practice to go into
a case and obtain a decree for a new trial
held at law under the direction of the court, chancery
for before the reign of Charles II. courts of law were ex-
tremely sparing in granting new trials but the
liberality of courts of law in modern times was the
element, provided the necessity of a new trial be shown to
193 Last, there is a distinction of the parties is in certain
cases good cause of a new trial - as treating the
125 law before verdict - soliciting their former witness
to bias their recollection in his own favor - or receiving a
202 new witness - In the attorney of the case - as
210 can be, had a witness spoken to as, of the, in the
140 the peculiar hardship is, in England - and
in general any kind of compulsion - or undue at-
tempt to influence the jury is good cause for a new trial

I have now says the Court are there with & establish
the several causes of new trials reducible under
certain general rules - there yet remain however
some miscellaneous rules with regard to new trials.
It was formerly held that no verdict could be
set aside in action of assumpsit because as
the English stand a judgment in assumpsit
could never in fact be conclusive between the
parties (ie it could be no bar to another action
for the same cause - for after one had brought forth
his action in his own name he might still bring
another for the same cause by a fictitious name
since the judgment may average & fictitious - 22k
But the rule is now established is that where the verdict
is against a verdict a new trial may be granted 4k
But where the verdict is for the defendant a new trial
is granted. The reason is because in the latter case than
the former, more is said in law and a new 1106
action may as well be commenced in the name of
another with a new trial - but in the former case 5k
where the verdict is a verdict - it would be more dif-
ficult for the party to commence a new suit - It was formerly
held that after two similar verdicts between 22
the same parties - a second new trial could not be 22k
granted - this was the rule of law now the it is pro-
bable that more difficulty would be found in obtaining the
one & remarkable case says the Court - 181

New trials - not in a case in Pennsylvania where a Federal
 361m verdict brought an action & the case was very
 384 short in his favor. The jury gave a verdict for
 when the debt - the judge granted a new trial and the
 4138- jury gave another verdict the same day - The judge
 said he would grant a new trial till the end of time
 unless the jury would give a verdict in the 1st
 and the fourth trial the 1st obtained a verdict.
 The fact was the demo-republican party had agreed
 that whenever an action was brought by a Federalist
 they would give a verdict against him - so strong
 was the influence of party spirit in that state.
 I do not wish any one to be so general in representing this as the
 characteristic of the whole state - this trial was
 in one county only.

It is a general rule that a new trial is not grant-
 able in criminal cases against the debt. The in ma-
 360p jor case it maybe, for the App. The benignant prin-
 3 ciples of the common law have thus far mollified
 1 the strict law for upon the principle of exact justice
 362; there is no reason why a new trial should not be
 granted against a person. But the court is
 exercising its discretion for or against the personal
 liberty of a person - choicest show clemency. But
 according to the com. Law a new trial is not gran-
 table in cases of criminal prosecution. It is gene-
 rally held that in all cases of criminal prosecution

for offences of a higher nature than misde-
meanors (i.e. felonies) no new trial will be granted 834.
in favour of the offender. But where the offence 558
charged is not higher than a misdemeanor - as
libel - breach of the peace - riot &c. new trial may 967
be granted - but then must always be ^{some} ~~an~~ ^{extra} ~~ordinary~~ ^{reason}
to the court some substantial reasons otherwise 65
the court will not even in such cases grant a
new trial. Therefore motions for new trials when 1102
they appear to the court to be merely for the pur-
pose of chicane - delay or evasion of the record, &c.
always be discharged. It is a strict rule of the 5th
Can. Law that one shall not twice be put in jeo- 266
pardy of his life. - But probably this maxim was first
never meant - nor can it rationally be taken to 150
prevent one already convicted from having a short
new trial. In com. new trials are granted 827
as well in cases of felony as in case of inferior
crimes - & it is the law in the United States 800
courts - and in the Prussia & Russia 120
there were several instances of new trials in cases
of high crimes & misdemeanors before the 11th C.
cent. - But the general rule in the 14th ^{nav- 48}
cent. ^{one shall be twice put in jeopardy of life with the exception}
~~trial may be granted~~ ^{may be granted} ~~an extraordinary~~ ^{an extraordinary}
~~proceedings~~ ^{proceedings} ~~in cases of~~ ^{in cases of}
high crimes & misdemeanors there are
two exceptions - first where the death has been accepted
but by fraud as by taking a coroner's oath &c. 1104

New trial and secondly where the death has been ac-
 cused by a misdirection of the jury in point
 of law. - where he has been substantially con-
 victed - but only from a mistake of the judge
 1st. as the jury gave an illegal verdict, on questions in
 the 2d form of law, a new trial cannot be granted for the
 4th, 5th civil part unless for the criminal part also. In
 5th 60 such information the 1st claim is a part of the
 damages, as well as the punishment of the life. De-
 1st. granting a new trial without qualification in this
 2d. 1st. vacates the former judgment and in England
 presents the original has been rendered. It is
 frequently the case that the court improve as terms
 on the part applying for a new trial - to let the pro-
 ceedings in the former judgment go on. Where upon
 granting a new trial costs are directed to abide
 the event, the trial if the successful party in the
 8th. first trial obtains a verdict in the second trial
 6th. he shall have costs in both trials. But where on
 9th. the other hand the unsuccessful party in the first
 4th. trial obtains a verdict in the second he shall
 10th. have costs only for the second trial. This is the
 2nd. rule in England - but in this state the general
 6th. is that the whole costs, both ~~trial~~ ^{trials} abide the
 final event of the last trial.

Writs of Error

A writ of Error is said to be a compulsion directed to the judges of a superior court to examine the record of an inferior court. It is the principle which govern in respect to the reversal of judgment there is no material difference between here and the practice in other places. But the mode of carrying the same into execution is different in different places. The business of a superior court on a writ of error is to reverse the judgment if found erroneous or affirm it if no error appears. Judgment cannot pass on a writ of error in default as it may in an original action - but the record of the court below must be examined whether the debt appears in court or not. Thus if it does so in any court of ordinary jurisdiction - & is sufficient judgment to go to default the court do not examine the grounds of the action at all - but execution issues for the whole of the plaintiff's demand. - But where a writ of error is brought the court cannot issue an execution till the records are examined. A writ of error there are two kinds viz Error in law & error in fact. Error in fact is not the proper case that the court above reverse the judgment, a writ of error is never issued in matters of fact.

but for some fact exist not the record is the only
 authority on the point. Thus if an action of assumpsit
 be brought against a carrier and a plea of non assumpsit
 be made the record is that the carrier is not liable
 and nothing more. In the matter of a writ of habeas corpus
 an action brought against a common carrier by attorney without production of
 a writ as the law requires the judgment of
 the court is final and not subject to review.
 Error is the always must appear on the record -
 it is in the record and it must not be a record
 you can suppose we are not draw conclusions
 from fact out of the record. The rules respecting
 error in this respect are only to guide the court and
 are not to be taken to any other extent in mat-
 ters appearing on the record. When the pleading
 contains a clerical error a writ of error may issue
 to bring it into conformity with the original
 where there is no dispute as to the fact that
 error is not as often assigned as it may be a
 sign of error where the parties may agree.
 Error may be assigned by parties that appear the re-
 cord which does not appear in the pleading - thus
 if one plead the plea of non assumpsit and the other
 plead the plea of assumpsit for the defendant
 the record is that the defendant is liable and the
 plaintiff is not - error may be assigned by the defendant

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It will be the court's duty to preserve the
testimony as well as possible - the error
may be on the record by his statement - or
dictation of a judge or not on the record
by his exception - but any judgment or opinion
going to decide the merits of the case as by direct
and indirect errors may be on the record by
his exception. But if error lies upon an objection to the
pleading indictment. And cannot be taken up as
a final judgment. It is in fact - the
error must be a final judgment. The error on a
demurrer may be corrected with
but cannot be assigned the appeal judgment upon
the record. The result - For some in the case
where a writ of habeas corpus is brought if the plea
is made some reason why he ought not to make
plea on a writ of habeas corpus - judgment upon the
demurrer is not final - error cannot be assigned
the final judgment. It is no defence to a writ of
error that the debt in the court below was made
fault where the declaration is faulty in substance
but in law; in making of the declaration it is a
plea. If debt makes default the court do not in-
quire into the declaration - the action is called
& execution issues - The debt may have a writ
of error. So he may if he had proceeded to trial
no exceptions taken before or after verdict - or

one thing stands for saying the law is in
 the right way, and is - placed the general
 power is correct, & is - or made a
 in the case of signing - rendered correct
 him to say, from a wrong error. So also if
 the give a good declaration - det makes a bad
 & the traverses it judges - in the act
 with error. because in a bad there can
 be no material issue. It is a general rule in
 law that whatever defect is more matter of a
 sentence, & not the substance of it, is not
 an error. But if the declaration is totally void
 tho it contains other causes of action - it incurs
 error - then if you can bring an action in her
 own name & shew that she is the wife of John Doe
 it is good cause & error if John beat him on
 the ground. So also if the bill lays his damages at
 such an amount. in action before a justice of the
 peace that he can have no appearance of no matter
 judgment upon the merits the court will be or
 reverse. no person can bring a writ of error.
 shall except one that is a party in the case, & must do
 so within time. And yet the right of error devolves
 to a common representative - to the heir - executor
 administrator or legatee - according to
 the nature of the property concerned in the
 suit. though in the process of the law

suppose some land to be in a common or
 narrow, - a building, chimney, or other
 over the land. If it has reached in 19 the near
 quarter - it may bring a writ of error & not other-
 wise. And so the reason in question is, as
 a house with a chimney, which means to bring
 a writ of error but is prevented by statute, who
 shall bring the writ of error, the heir or executor &c. 10. 2.
 Either for if the heir should a judgment re- 358
 lease to a writ of error, yet the executor may pro-
 cure a reversal - and so vice versa. It is a general
 rule that all who join or are joined in the action
 must join in the writ of error - but suppose one of them
 three dies, his executor - he does not want a re- 210
 versal & the other two have got a writ of
 error may be in favour of two of the three rights.
 To the question whether a writ may bring a writ of
 error to reverse a judgment against a principal
 had been there been no case to the contrary I should
 be clearly of opinion that he may, and suppose he 10. 6.
 is now to be finally set & allow the writ on appeal 48
 having to reverse a judgment against his principal, I think
 he is as much a party to the record as a co-defendant 47.
 There are authorities on both sides of the question.
 and the more of reasoning with writs of error is
 various in England, where a writ of error is brought
 from the court of common law the record is in error.

and not a transcript of it - in that case the writ alone have reversed in affirming the judgment they may have a discretion. But in some cases where the court of Kings Bench have not jurisdiction of the matter then the remission is to be made & made as a transcript & amended - But if a writ of error be removed from the R. B. & the name of the transcript of the record only is carried up - unless the Chief Justice choose to carry it - but it is not then delivered but he keeps it in his custody - If the judgment of the R. B. is reversed - the case is sent back to the Court of Kings Bench judgment according to the advice is given of a writ of error being brought by a civil action ad cautelam error to the plain error & a writ of error is not used at all here & although the judges here it is necessary to be made in England. Our method is to take out a writ 10 days before the sitting of the court to be returned to the clerk & have it read to the clerk or a copy of it left at his usual place of abode 10 days before the sitting of the court. In England there is a court of Exchequer - Common Pleas & King Bench - The extent of authority in each is nearly the same only the judges have cognizance of writs of error from the Common Pleas. We have no court of Exchequer in this state but the principles which govern their Exchequer.

are, for the most part applicable to our an- Error^{ist}
nient country. There are 4 judges to each
of the courts above me above. it writ of error lies
from the K.B. either to the Exchequer or under be-
fore the judges of the court in term. Cases brought before
judges of the Exchequer - or immediately to the King
& Lord, at the election of the party in error. - Writ
of error lies from the court of Exchequer to the Ex-
chequer chamber before the judges of K.B. & C.P.
Lord Chancellor & Lord Treasurer. It is an inroad
to state all the proceedings in the court where in
the writ of error and the judgment there is taken
is the made in a manner of the truth. It is a law
of the state that if the party live out of the state
was to the state at the moment it was made
the cause shall be continued to the next term but
suppose the court don't know that the party live out
of the state & proceed in a manner that would be
disturbance of the attorney in the state to remove the
cause that the party live out of the state & to be
removed to the next term. In doing an
error in fact, it were better it should be
sent to the next term or so. The cause also were
not may be continued, provided it is
sent as if it were an error in fact. It is re-
markable are occurred here in a manner
judge where a writ of error was brought to remove

a judgment rendered in the county court against
a minor. The father and mother were brought up
to the court, and agreed as to the time when the
law would be made the court however inclined to give
the most weight to the testimony of the mother
because in *verdictum* is the evidence in a writ of error
or in a writ of habeas corpus. But this issue will not be
taken upon itself to deny the fact - as if you
would deny that the debt lived out, the debt or
that he was a minor or a *curator* in fact.
a writ of error in fact will lie before the same
court in which the first judgment was made. It
is no impeachment of their judgment. because some
new matter is brought up to review. The writ is
then brought *coram vobis* as distinguished in contradic-
tion to *coram nobis* when it is brought by
the *kins* of the defendant in error.
as to the general principle relating to the effect of
a reversal of judgment - where a judgment is
reversed the party prevailing in the writ of error
is to have such a judgment rendered in his favor
as will restore him to all he has lost which he
could in conscience and for justice recover
similar to a bill of exchange, or execution had
been taken out upon the judgment in the court of
law & tried or been paid at the court of law or
be restored with interest. In the *verdictum* of the

the court below is in error and the execution 1077
stopped. Indeed will be reversed - the, and, pre-
ceding in the writ of error - not if it is 256
for the money recovered or paid on the execution 1078
but execution issues immediately. Suppose 431-3
upon a demurrer to a declaration it is adjudged 262
to be insufficient - The court above upon re- 1079
versing their judgment and setting up the dec- 80
laration must render the same judgment 1080
as the court below would have rendered. This 266
however cannot be done only where the superior 1081
court has a jury - if they have no jury, the 774
cause must be sent back. This is the law 805
as to the law and equity in error - if the court below 1082
improperly admit a jury - upon a writ of error it is 442
reversed - the jury is to be 1083
sent with a jury if a matter of fact is in question 1084
or if the law is in question the judgment is 1085
reversed - but if the law is in question the 1086
judgment is affirmed - the court below and 1087
state the law - and the court above is to 1088
decide the law - the court below is to 1089
decide the fact - the court above is to 1090
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decide the fact - the court above

[illegible]

37
In the execution is made up to the Error
sheriff but not paid over to the receiver, for the
by an order goes out to the sheriff to repay the 588
money. Most of what I have said on this subject
just now the judge overruled the amount that is 261
the judgment of the court but is reserved. But in 3.
if the judgment in a former execution goes out 442
for the interest upon the amount of the execution last
where it has been delayed together with costs &c 250
as to the question whether a writ of error shall be
be a writ of error & an execution time. It is now 225
after the writ of error is allowed - delivered to the 241
clerk of court as he is called in law. So we have no 27
a sheriff and notice of service given to where Burns
but as a receiver in all cases - But if the exe 576
cution be in the hands of the sheriff & he proceeds 205-9
to say without notice he is guilty of no crime but is 210
not a criminal before the court when he has had 302
legal notice or he will be guilty of a crime. It is 211
to show the judgment but as this - would be 321
a crime of course. But the writs were in
action which is a crime a criminal offence - and
when the writ is read out of the court & give a
complete remedy in all cases. But the writ is
judged to be. If a man is in jail or in the custody
of the sheriff by virtue of an execution & a writ of error
or error he is to be there 33. and then the writ is to be

its designing error - you must begin with
stating that such error came before such a
court - state the whole record in words, figs - &
are there - that the court mistook the
law &c. &c. you may state as many errors
as you please - By the same law you may al-
lege errors generally - however it seems that
the courts in Eng. won't take notice - nor inquire
into errors not specially alleged. which is the
practice our Supreme court of error estab-
lished the 6th June. I know of no state in the
Union except one or two where

the principle is established. It was thought
 to be necessary to be in favour of the defendant
 unless all the defects in the record which
 are to be laid hold of by the other side. How
 ever says the Judge I am not entirely satis-
 fied with our rule. Error in fact & error
 in law cannot be assigned in the same writ
 tho they may in separate writs & the reason
 alleged is that one must be tried by a jury
 and the other by the Court. But says the
 the reason seems to be insufficient. No objection
 can be made against a declaration, plea be
 144th cause there are distinct matters in issue and
 703 if one tries the one he says of the other he
 144th shall have a bill of attainder & a writ of error in another
 144th saying he is a thief - here the proper method
 144th would be to demand to the first court of the
 252 matter in issue in law & plead the facts in re-
 144th spect to the second which makes a case in law &
 58 be tried by the jury. Where error in fact and
 144th error in law are joined it can only be taken
 144th advantage of by demurrer or a bill of error
 144th if the right in error pleads in a bill of error
 144th he admits the facts stated & if they are ma-
 144th tured he will be convicted. Nothing must be
 144th done in a bill of error other than to state the record
 144th & say the record is wrong that is all.

and by continuing the same from one term to
another the interest may be increased the
amount to more than the amount of the second
amount due to the first due to the interest the interest are
15 found to be to be more than the first and second
and the third for the first and second and third are
104 found to be more than the first and second and third
that even the most they can release the first, with
the debt being about in the least that the
matter is of the, but we have to do it the first
we never decided directly of the first
they have that has taken place since the first
want going to discharge the debt in error - as a
rule release of error may be decided in favor of the first
188 & error - but if you mean to contend that the
release of error may be decided in favor of the first
It is a general rule that where there is more than one
several acts of the first & error against one of
them they must all join in the writ of error
This is the general rule in Eng. but it is otherwise
in this country. Thus in the first & a better reason
is given - it is an error in the first & a better reason
174 given by a first. When the first & a better reason
188 given in reversing the first & a better reason
188 judgment may be reversed in error & a better reason
The error in the first & a better reason
to the first & a better reason

There is a case reported in Root on Trusts 6770
but that there has been contradiction by a court
decision. There may be two of that kind
and one may be reversed and
the other affirmed - when in doubt there are
two before the one good and the other
quite opposite - one may be affirmed & the other
reversed - as in a suit against a defendant to
stop a receiver of the executor's account out of 52
the price of the estate - then comes a decree in favor
and the private account of the executor is taken 30
The executor may, it is said, or should have
been required to - judgment on the three facts
may be reversed & the other stand. - It has been
decided that the party in whose favor the
account is reversed must be restored & all the
lost - the principle must be maintained
- before execution has been levied - and the
goods captured & sold, liability of the office can
not on the purchaser to restore these goods by no
means - he is released from all liability & will
be under opportunity to inquire where property
it was & whether he can hold them. This prin-
ciple is altogether for the sake of third persons.
For where a writ of assize is taken out and the
property of the owner is taken away and
he is not allowed to recover it & the other party, and

Bills of exceptions

A bill of exceptions is a statement of facts, still annexed to the record for the purpose of laying off the responsibility for error. The statement consists of acts not originally before the court on the record but which are the result of decision of some inferior court, judgment which the party against whom judgment was rendered is dissatisfied with. It is called a bill of exceptions because it contains exceptions to the inferior court judgment. This mode of removing errors was introduced in 1791. In 1824 was introduced the act that in 1825-1826. The bill of exceptions being allowed a writ of error when cannot be taken except in cases to which it can be applied - the writ of error does not regulate the removal but allows it to be removed - it is the court of appeals - added in 1827. In 1828 the act of 1828 - etc. can it be taken before a committee on the part of the party. The removal of the case to the court of appeals such to be determined by the bill of exceptions to be removed or not - admitted or rejected. But this a bill of exceptions to the court against whom the judgment is rendered - this is also the case for a 25th of November. But if the judge admits the party's evidence & admits & directs a jury to find for the party.

exceptions - a bill of exceptions - for not in the usual
 form - the bill of exceptions is a bill of exceptions - it is a bill
 of exceptions - it is a bill of exceptions - it is a bill of exceptions
 445 in a criminal case, and it is a bill of exceptions - it is a bill
 of exceptions - it is a bill of exceptions - it is a bill of exceptions
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question whether bills of exceptions are al- Error
lowed in criminal cases in England not in Scotland 114
but it is now settled - it having been once allowed 125
on an indictment in the High Court. It is also once more stated
however that bills of exceptions are not allowed 128
in criminal cases in England - 129 - 130 - 131 - 132 - 133 - 134 - 135 - 136 - 137 - 138 - 139 - 140 - 141 - 142 - 143 - 144 - 145 - 146 - 147 - 148 - 149 - 150 - 151 - 152 - 153 - 154 - 155 - 156 - 157 - 158 - 159 - 160 - 161 - 162 - 163 - 164 - 165 - 166 - 167 - 168 - 169 - 170 - 171 - 172 - 173 - 174 - 175 - 176 - 177 - 178 - 179 - 180 - 181 - 182 - 183 - 184 - 185 - 186 - 187 - 188 - 189 - 190 - 191 - 192 - 193 - 194 - 195 - 196 - 197 - 198 - 199 - 200 - 201 - 202 - 203 - 204 - 205 - 206 - 207 - 208 - 209 - 210 - 211 - 212 - 213 - 214 - 215 - 216 - 217 - 218 - 219 - 220 - 221 - 222 - 223 - 224 - 225 - 226 - 227 - 228 - 229 - 230 - 231 - 232 - 233 - 234 - 235 - 236 - 237 - 238 - 239 - 240 - 241 - 242 - 243 - 244 - 245 - 246 - 247 - 248 - 249 - 250 - 251 - 252 - 253 - 254 - 255 - 256 - 257 - 258 - 259 - 260 - 261 - 262 - 263 - 264 - 265 - 266 - 267 - 268 - 269 - 270 - 271 - 272 - 273 - 274 - 275 - 276 - 277 - 278 - 279 - 280 - 281 - 282 - 283 - 284 - 285 - 286 - 287 - 288 - 289 - 290 - 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The bill is authenticated in England by the signature of the
judge or judges - in Scotland it is certified

exception to the Chief Justice in *Ex parte* *Thompson*
 Part the bill must contain a statement of the facts
 80 and the law in support of the writ or writs it
 was founded. If the facts are true it is
 826 the law is true it is a writ of right - it is
 not a writ of privilege. - It is a writ of right and the
 intermediate judgment & facts on which it is
 founded but the error of objection and the
 848 arguments used on both sides. The judge re-
 856 sponds to a writ in the Court. He is
 the commanding officer. The bill must be
 866 true and it is a writ of right and it is a writ
 of right.

In an appeal of exception is not a writ of right and the
 876 law is not a writ of right. The bill is a writ of
 886 right and it is a writ of right. The bill is a writ of
 896 right and it is a writ of right. The bill is a writ of
 906 right and it is a writ of right. The bill is a writ of
 916 right and it is a writ of right. The bill is a writ of
 926 right and it is a writ of right. The bill is a writ of
 936 right and it is a writ of right. The bill is a writ of
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 966 right and it is a writ of right. The bill is a writ of
 976 right and it is a writ of right. The bill is a writ of
 986 right and it is a writ of right. The bill is a writ of
 996 right and it is a writ of right.

Writ of Error

a writ of error is a common law writ of a
 18 higher court to examine the record on which

When one sees the correspondence between the 1877
 and the 1878, about the same time, it is 1877
 1878, and it is not at all clear that the 1877
 what will be recovered and what will not. 1877
 doing error. When the section is completely 1877
 cited - and to be of the 1877 - 1877
 from the 1877 of 1877 - 1877
 not have been taken 1877. It would be to 1877
 which need 1877 - 1877 - 1877
 or not - the authorities are contradictory 1877
 point. 2 Dec 21-570 - 1877-255-253-253-253-253

In a judgment of affirmance the practice is to follow the
interest of the original judgment - The intention is to leave
in error the erroneous judgment and not the original
judgment as a final judgment - The 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 147th, 148th, 149th, 150th, 151st, 152nd, 153rd, 154th, 155th, 156th, 157th, 158th, 159th, 160th, 161st, 162nd, 163rd, 164th, 165th, 166th, 167th, 168th, 169th, 170th, 171st, 172nd, 173rd, 174th, 175th, 176th, 177th, 178th, 179th, 180th, 181st, 182nd, 183rd, 184th, 185th, 186th, 187th, 188th, 189th, 190th, 191st, 192nd, 193rd, 194th, 195th, 196th, 197th, 198th, 199th, 200th, 201st, 202nd, 203rd, 204th, 205th, 206th, 207th, 208th, 209th, 210th, 211st, 212nd, 213th, 214th, 215th, 216th, 217th, 218th, 219th, 220th, 221st, 222nd, 223rd, 224th, 225th, 226th, 227th, 228th, 229th, 230th, 231st, 232nd, 233rd, 234th, 235th, 236th, 237th, 238th, 239th, 240th, 241st, 242nd, 243rd, 244th, 245th, 246th, 247th, 248th, 249th, 250th, 251st, 252nd, 253rd, 254th, 255th, 256th, 257th, 258th, 259th, 260th, 261st, 262nd, 263rd, 264th, 265th, 266th, 267th, 268th, 269th, 270th, 271st, 272nd, 273rd, 274th, 275th, 276th, 277th, 278th, 279th, 280th, 281st, 282nd, 283rd, 284th, 285th, 286th, 287th, 288th, 289th, 290th, 291st, 292nd, 293rd, 294th, 295th, 296th, 297th, 298th, 299th, 300th, 301st, 302nd, 303rd, 304th, 305th, 306th, 307th, 308th, 309th, 310th, 311st, 312nd, 313th, 314th, 315th, 316th, 317th, 318th, 319th, 320th, 321st, 322nd, 323rd, 324th, 325th, 326th, 327th, 328th, 329th, 330th, 331st, 332nd, 333rd, 334th, 335th, 336th, 337th, 338th, 339th, 340th, 341st, 342nd, 343rd, 344th, 345th, 346th, 347th, 348th, 349th, 350th, 351st, 352nd, 353rd, 354th, 355th, 356th, 357th, 358th, 359th, 360th, 361st, 362nd, 363rd, 364th, 365th, 366th, 367th, 368th, 369th, 370th, 371st, 372nd, 373rd, 374th, 375th, 376th, 377th, 378th, 379th, 380th, 381st, 382nd, 383rd, 384th, 385th, 386th, 387th, 388th, 389th, 390th, 391st, 392nd, 393rd, 394th, 395th, 396th, 397th, 398th, 399th, 400th, 401st, 402nd, 403rd, 404th, 405th, 406th, 407th, 408th, 409th, 410th, 411st, 412nd, 413th, 414th, 415th, 416th, 417th, 418th, 419th, 420th, 421st, 422nd, 423rd, 424th, 425th, 426th, 427th, 428th, 429th, 430th, 431st, 432nd, 433rd, 434th, 435th, 436th, 437th, 438th, 439th, 440th, 441st, 442nd, 443rd, 444th, 445th, 446th, 447th, 448th, 449th, 450th, 451st, 452nd, 453rd, 454th, 455th, 456th, 457th, 458th, 459th, 460th, 461st, 462nd, 463rd, 464th, 465th, 466th, 467th, 468th, 469th, 470th, 471st, 472nd, 473rd, 474th, 475th, 476th, 477th, 478th, 479th, 480th, 481st, 482nd, 483rd, 484th, 485th, 486th, 487th, 488th, 489th, 490th, 491st, 492nd, 493rd, 494th, 495th, 496th, 497th, 498th, 499th, 500th, 501st, 502nd, 503rd, 504th, 505th, 506th, 507th, 508th, 509th, 510th, 511st, 512nd, 513th, 514th, 515th, 516th, 517th, 518th, 519th, 520th, 521st, 522nd, 523rd, 524th, 525th, 526th, 527th, 528th, 529th, 530th, 531st, 532nd, 533rd, 534th, 535th, 536th, 537th, 538th, 539th, 540th, 541st, 542nd, 543rd, 544th, 545th, 546th, 547th, 548th, 549th, 550th, 551st, 552nd, 553rd, 554th, 555th, 556th, 557th, 558th, 559th, 560th, 561st, 562nd, 563rd, 564th, 565th, 566th, 567th, 568th, 569th, 570th, 571st, 572nd, 573rd, 574th, 575th, 576th, 577th, 578th, 579th, 580th, 581st, 582nd, 583rd, 584th, 585th, 586th, 587th, 588th, 589th, 590th, 591st, 592nd, 593rd, 594th, 595th, 596th, 597th, 598th, 599th, 600th, 601st, 602nd, 603rd, 604th, 605th, 606th, 607th, 608th, 609th, 610th, 611st, 612nd, 613th, 614th, 615th, 616th, 617th, 618th, 619th, 620th, 621st, 622nd, 623rd, 624th, 625th, 626th, 627th, 628th, 629th, 630th, 631st, 632nd, 633rd, 634th, 635th, 636th, 637th, 638th, 639th, 640th, 641st, 642nd, 643rd, 644th, 645th, 646th, 647th, 648th, 649th, 650th, 651st, 652nd, 653rd, 654th, 655th, 656th, 657th, 658th, 659th, 660th, 661st, 662nd, 663rd, 664th, 665th, 666th, 667th, 668th, 669th, 670th, 671st, 672nd, 673rd, 674th, 675th, 676th, 677th, 678th, 679th, 680th, 681st, 682nd, 683rd, 684th, 685th, 686th, 687th, 688th, 689th, 690th, 691st, 692nd, 693rd,

[illegible]

to their heirs not that their heirs took any
 thing during the life of the ancestor. Estates now
 were descendible to the issue & the estate of fee
 could not go out of his blood - but as it had been
 descendible - if he had none it would revert to the
 lord or baron who granted it. It could not go to the
 brother or any other collateral relations. For then
 we find the original meaning of the term heir -
 this is the meaning of the term under the prim-
 itive rule. Thus if a baron was seised of
 lands - he died - he died childless and the estate
 descended to his wife - he died childless and the
 wife died - then the son of the baron holds it in
 his life & after the death of him it goes to the
 son of his wife. The word heirs or heir in this
 means the same thing immediately and the heir at
 law may have it to the end of time. It now meant
 heir of the body only. But in process of time a fic-
 titious rule of descent was resorted to in order to
 let in the collateral relation. When a man died
 leaving an estate in fee & no issue of his blood to
 inherit - instead of reverting to the grantor it went
 to the next of his wife next of the blood of the first mar-
 riage. Thus he died childless was the purchase of his
 son inherit & dies without issue the land instead
 of reverting back to the grantor goes to the brother of the first
 both of the blood of the first marriage for the estate

engaged in the crusades - wanted money, or
 had made purpose in lieu of fairly took money
 of their feudatories or vassals, for the land - & these
 feudatories were allowed to sell first one quarter
 & then one half of their land &c. The Barons find-
 ing they were debilitated by the service they had been
 rendering - and the prospect of the feudatories
 increasing were fearful that their influence would
 be done away. In addition to this the King & Court
 at court of the situation of the people except that
 taken under the King. This idea of national
 recovery went to the Barons, who being accustomed
 to be - and in want of money they called to their
 minds - these Barons are extremely anxious that
 the King should have the land in the country
 in spite of the law they were to grant land, this
 King, and the King of France - this construction was put
 upon these words - and in the last century it was
 so as to make the land inalienable. This did not ac-
 cord with the interests of the common people &c. &c. that
 the King who is it was then inclined to look at
 the growing influence of the Barons. The King did not
 like to see this aristocracy growing up - and as
 he wanted the land - the people could do nothing
 than to buy their crown. When therefore one gran-
 ted to another & the crown was sold - it was called
 a fee simple conditional - & even if the grantee had been

The Saxon Kings had as well a personal estate
 may have been given away by will. But this was
 before the feudal tenure was introduced in this
 the invaders did not bring with them from the west
 of Germany laws allowing a devise - but they came
 originally from the Roman empire. From the conquest
 down no devise were known before the 12th century
 except in some villages in which lands were allowed to
 be devised all along. But the ingenuity of the clergy
 found out a way by which property might be carried
 long before this statute. The History of the Church
 in England there may be of eminent use in giving
 us further ideas on the subject. Land in its true mean-
 ing could not however be devised away. In the
 first place uses might be conveyed by deed - thus the
 owner of his land gave a piece of land to the use of those
 he says he has got the deed & he will have the benefit
 of the estate but the courts say that you will not let
 those have the use of the land we will inflict a penalty
 on you. Thus it was that the legal estate descended from
 heir to heir on one side - the land being one rent and
 the use another. often on their death heirs were willing
 to devise their land to some one person for religious
 purposes but they could not effect it without that
 a use might be devised this was practised. this vast
 accumulation of property into the hands of the clergy and
 monasteries was done in the 12th & 13th centuries

The Statute seemed in these cases decided all else
 given to construction. And so, where the Statute, as in
 while the difficulties & disputes between the owners of
 York & Lancaster the owner of property and influence
 before they took an active part in the dispute took
 care to dispose of their property in such a manner
 that if they should chance to be the party finally suc-
 cessful it should not be subject to a real interest
 was liable to be forfeited to the crown. Thus they, and by
 enjoining the legal estate to some person, were not
 likely to be engaged in the matter - for the use of the land
 a use not being profitable. In this way they succeeded
 in their purpose, in case they should be considered
 as treason. During the latter part of the century a
 great part of the land in this was in the hands of
 it introduced a good deal of confusion in the law - &
 by the 12th Hen 8th the title of land then conveyed
 was now transferred to the crown, and the crown
 difficulty arose - a use could not be created - & a course
 land was lost. In remedy for this the 22nd Hen 8th was made
 and declared it to be lawful to convey land to a person
 as to the technical rules of construction applied
 to uses - devices were not subject to them. As mat-
 ter was at the intention & a greater of devices if his
 intention were not expressed in the terms, he was said
 thus a convenience to a man who had been a tenant
 of - but a convenience to a man who had been a tenant of the

[illegible]

may be passed by these words - & without
 all the interest he has in the thing, these ideas, for
 papers as much as if word estate were used

Estate given to a woman to hold during her widow
 hood is an estate for life - because the determination
 at the moment she marries yet her widowhood may
 last during her life. It seems as though if an estate
 real estate is where one gives to another an estate
 for the life of a third person. Some differently former
 by were about this business. Thus suppose an estate
 is given to A for the life of B in consideration of mo-
 ney received - A dies before B - then who holds the
 land till B's death - It could not descend to the heir
 for an estate for life is not an estate of inheritance
 - it is not a fee simple nor fee tail. It could not go to
 the executor because it was real estate. It could not
 revert to the grantor for he had got his money
 for it. Well let it escheat then but it can't escheat
 for the old feudal scheme would never allow an estate for life
 or years to escheat. It seemed that nobody
 could upon the principles of law take it - would it
 were not it were a hereditament - an estate for
 years or for the most during a certain time. However together
 made a statute soon settled this point. The Executor
 was to sell the term & distribute the money as in
 real estate. As such Stat. as the money is
 received in this & most of the other states in the Union

But court in a case concerning this it is assumed
 to be inclined to introduce these Statutes into the law
 of the Middle & in fact made law a court of equity do.
 Lord Hale & one Lord Mansfield say they have
 while they were in the bench made more law & in
 probably better law than the Statute in the mean time
 during that period.

As to estates for life by grantation &c. - wherever
 married a woman receives an estate in fee simple & con-
 tinues for life - i.e. one that may continue till his death
 but yet he can have it no longer than during his
 estate. So if the husband undertakes to convey in
 any manner the conveyance will be in coverture
 coverture only - the estate cannot be taken from
 the husband's estate.

Another kind of estate for life by grantation &c. is
 a Jointure. - This is an estate which the wife on the
 decease of the husband is entitled to from his real
 property. By the English law the wife shall have
 one third of all the real estate possessed by the
 husband during coverture - to her life. It is not
 material whether he conveyed it away or not dur-
 ing his life - it still remains subject to dower.
 All that estate shall be subject to dower unless he
 issue if any the husband was bound to do - except
 as by the will be shown. - Dower is a right which
 cannot be devised away to any one else and is

paramount to all alienations - it cannot be taken
 by the creditor - tho' all the real & personal estate be
 be absorbed by the debt. An agreement on her part
 to accept a jointure in her dower will bar the dower
 provided this agreement were made during coverture
 but if after coverture determined & the wife being
 well returned she accepts the jointure it shall bar her
 dower. An agreement before marriage & accept
 of a jointure expressly in lieu of dower shall bind
 her. But tho' she accept personal property in lieu of
 dower by an agreement before marriage it will
 not bar her right to dower - I cannot enter the ground on
 quite different ground - tho' it is said to be taken for
 the debt of the husband. He is bound to provide for
 her - and one husband & wife marriage cannot make
 her sole dower. It is true in all these cases the wife
 binds herself by a jointure or releases either real or per
 sonal expressly or implied in satisfaction of dower. It is
 accepted that not the husband. There is one case where
 she cannot be estopped by the husband because if
 thus if one gives to A & the heirs & his heirs & his
 present wife - if she dies & he marries another
 she will not be estopped because if one marries some
 one cannot prevent this general title.

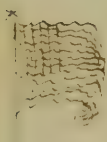
As to the dower or estate with issue the wife is to be con
 sidered - it must be either a legitimate or her title - it
 can be none - thus if she has the legitimate estate

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[illegible]

an estate in such kind for said wife. That I never
 intended. The wife must have had seizin
 in fact - tho' the wife should not have seizin in
 law - but the wife is never. The ground of the
 difference is that in the case of a wife, it is the hus-
 band's fault if he not remains married until he ac-
 tual separation showing death - but if the husband
 has not seized in fact of his own estate it is not the
 wife's fault & therefore it shall not be a forfeiture.
 The child must be born alive. It is said in some
 cases & say - but says the case of *Green* to be right.
 if there are other manifest evidences of life in the
 child. But it is not necessary that there should ac-
 tually be issue born to entitle the wife to succeed to
 her husband's estate. Thus if a woman be tenant in
 tail male - tho' she has issue a daughter yet shall not
 the husband be tenant by the curtesy, because the right
 cannot inherit. Tenant by the curtesy has a life
 estate in the whole of the wife's land but tenant in dower
 or dower only one third of her husband's estate for life. A
 woman may be tenant by the curtesy of a trust estate. 229
 but it is otherwise with a tenant in dower. An estate with
 mortgaged to the wife shall not be held by the husband. A
 tenant by curtesy will foreclose. A question may
 have been made says Judge Peckham some time ago whether
 a husband may not in this state be tenant by the curtesy of
 the wife's land in case they had no issue. All the legal

Courtesy in this state are by the Statute of Char. II. held as
 in writing law. The custom & observation are
 that the husband should be seised by the country. The
 wife land so holden whether he had issue by her or not.
 but as this question has been before it grows more
 a more difficult and attended with less prospect
 of success. It was once occurred in the Eastern part of
 this state by a judge case while we were under the
 British Government where there was a large estate
 left into the hands of a number of sons who as our court
 decided must take equal shares in it. The eldest son
 unwilling to have land taken away from him and this
 against the intention of his father & his will and on
 these his complaint against the court which in these
 circumstances was the highest authority. But gen.
 court after being written in several manner sent
 over dispatches to see about the matter - for they trans-
 mitted that Charles should be taken from them
 which Charles they made their heir. However it was
 then returned with a different opinion. The decision of the
 court was affirmed and the estate divided between
 sons and daughters in equal shares. After this our
 gen. court or assembly went on & made laws much
 after the same manner. The husband living with an ad-
 vantage in making a will. But any estate given
 to the wife or her heirs & separate use shall not be held
 to be made in a way by the Statute.



400
as to the incidents of an estate for life - the tenant for life is liable for waste - not in damages but by the forfeiture of the estate to the reversioner or remainder man. That part of the estate only is forfeited upon which waste is committed - if it be here there will be the estate, however as it is called for the whole is forfeited. another rule on this subject - the not a beneficial interest in the estate is that if tenant for life undertakes to convey a fee simple - or any larger estate than he has he forfeits his life estate. This made the feudal system unworkable as a breach of allegiance - especially rebellion. A reason exists for this rule at present in this, & especially here where the records are recorded. It was not settled days since here when I came into practice - & for the sake of saving the matter decided brought up to the court. - The court decided against me, & I think rightly too. Tenant for life is entitled to fire - to burn - to make fences or implements of husbandry. as to repairs of houses, &c. if nothing said in the contract the tenant for life is to make repairs - he may use timber from the land for this purpose - but he may not cut down one kind of timber - as oak - & plant in another kind as pine - but he must actually use what he cuts down in repairs. As to these three kinds of fee simple, fee tail & fee life - these are real property - as the personal estate is - but the personal estate is not property in the same sense as the real estate is. & the personal property is not the same as the real estate.

carries away a minor part of it's Rent & profits;
ministers & damages and are all made.
In the next instance as to the reversion - some
times it the life & reversion is the estate in fee
and the estate is determined. The general rule is that
if tenant-for-life could not know when the estate
would determine then the estate must go
to his representatives & not to the reversioner or re-
mainder man. Thus if the life estate is determined by
the death of the tenant - or by the death of him for whose
life it was made - the estate must go to the re-
presentatives of the tenant-for-life - because when it
died - in default of any reason is called for that
he should live till the next life is ready - But if the
estate is determined by his own act then the estate must
go to the reversioner. Thus if a woman has an estate
as long as she remains a widow - & by taking a husband
the estate goes to the reversioner - estate must go
to the reversioner. because as is said it is her own vol-
untary act. I am not sure whether she should
be any longer in a state of widowhood or married or
for she herself chooses a husband. Her estate or the estate
must go in her own case a minor consideration
Tenant at will if he is turned out by the landlord
shall have the estate but if he leave the estate
himself the estate must go to the landlord
I have given this far says the judge in treatise of

great respect, there are certain provisions which
are to be observed in the delivery of a deed
at the time.

The deed must be read, or at least the contents
of it must, be read aloud, or not at all. This maxim
originated while the French language prevailed in some
countries, & was at first known common & there
any such thing was known as a testament, and so
it was called. A deed which would not then, be
a deed, there must be a deed, and that deed, or
deed, is the deed, and the deed, is the deed, and the deed
without the deed, is the deed, and the deed, is the deed,
the deed, is the deed, and the deed, is the deed, and the deed,
in the presence of witnesses delivered to the grantee, or
last or a third, a tree growing on the premises, or
the, and the deed, is the deed, and the deed, is the deed, and the deed,
in the presence of the deed, and the deed, is the deed, and the deed,
some persons in the deed, and the deed, is the deed, and the deed,
& when the deed is read, and the deed, is the deed, and the deed,
would make a memorandum of the deed, and the deed,
the deed, is the deed, and the deed, is the deed, and the deed,
by deed. But now since writing is a common mode
the delivery of a deed is considered as a perfect act,
and not the truth of memory, as the ancient law
of Spain. The rule that a deed is not a deed, is a common
maxim in France, is, in fact, the rule, is in
England, & in the United States, which is in the

which perhaps was ever brought upon itself by
 this subject. It is contended on the one hand, that
 if other words were used in the deed which indicated
 an ~~intention~~ to grant only an estate for years
 then the intent is ought to be followed. By the con-
 verse is here used it was intended as a description
 of the person to have rather than the quantity of
 estate - the reasoner here imagined that the
 word here contained the whole intent. The word
 is used as descriptive of the quantity of estate in
 its legal acquisition - & a deed must always take
 the legal construction without regard to the inten-
 tion. I have an essay on this subject and the matter
 in my hands a part of which will read thus - The
 same estate is sometimes in grant - sometimes
 where it is - I have ^{little} to say on this.

The next species of property to be considered is an
 estate for years - or Leases
 an estate for years is the term which is used to denote
 a title to be held by the tenant for a time certain.
 Let the term be ever so long it is in law, personal estate.
 But in the title we consider a time term as real
 estate. So long a distinct use has been made of
 which we can tell something a term it must be to
 make a real estate of it. 999 years is time enough
 and how much shorter we know not. an estate

[illegible]

The word Tenant - lease - demise - more or less - are all
synonymous. A lease is a conveyance of a lease for a term
more or less - but it is not necessary to - the word lease that in
the term is to be a lease for a term. It will be
commence at the date of the lease if nothing to the contrary
is expressed - if there be no date - it shall commence when the lease is
delivered. If there be both date & delivery at dif-
ferent times - the term shall be presumed to com-
mence at the date - unless it be shown that the
intention is to commence at the delivery. Tenant in
fee simple may make a lease to last any ~~term~~
less than a term of years. Tenant in tail may
make leases not only for a term of years but for three
lives after the death of years - a life & years & lives -
years - a lease for three lives can only bind the
land in tail & not the remainder man or reversion-
er - Tenant in tail & his issue in tail can never
cut it in question. Tenant for years can never grant
or demise a life estate out of his term because his
estate is greater than a term for years - the term would
be for years. Tenant for life may create a term for
years - but it shall not last longer than his life. Tenant
for years may make a lease - or demise - or assign
his term. A man may make a lease & commence
a term of years. A great dispute has arisen relative

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it is now known that the word was taken from a Latin
 and French word. The former was said of
 the crime of a crime - means that the term shall
 not commence till the day after the date - the latter
 shall commence the same day. But of this, again
 an important question - relative to the estate
 for the being a person & estate is the term for the
 day did not commence till the day after the date - then
 74 as we considered it was a convenience in future
 claims and claims made. However the question came
 out of it - are now changed and the things the which
 where it was decided that the words were immate-
 rial - that that they should be construed as the
 law of the effect - the instrument. *Ut res magis
 utilis quam perici.* But on this we have a lot of ma-
 jority, we that Lord Chancellor D. & others are
 concerned. But they will have it. Then, it is clear
 may commence from time past as well as present
 and future. - It has an implied date as the
 30th Feb. or 1st March is made take effect - or rather
 the day of the date. The time that not certain in
 the face, the time may be rendered so by reference
 to some other instrument. Thus, if a lease be for
 600. as many years as it is to be for - it is to be for
 80 to another term, many years as it shall be - this
 may be rendered certain by its determination. But
 if it does not determine the estate is void.

of 10 years to 13, 14, or 15 years as the
 will choose - but the courts say is certain it is a life
 in years & not in years & days. If one dies & another
 after for one year & then another year - then the first
 cannot have decided in favor of the second - and the first
 is now the most common kind of estate. - but before it is
 done till it be received in writing by the testator it is
 not good for uncertainty. The life in such case
 may enter without being a life estate - it is a mere
 license - a mere estate at will - but if a tenant at will
 in such case enters he is liable to an action with the
 sentence according to agreement - the life estate
 he receives a lease is bound to pay rent whether he
 enters or not. It is called a life estate for life
 as long as he lives. And it is a maxim that a life
 estate cannot be granted out of a life estate - a person
 not with respect to descent there is a reversion in
 the law. There are limits however to the rule - the
 birth is the first upon whom it is to be taken - the
 father has an estate for life for years - and
 not only one life estate may be created out of the
 life estate - but as many remainders may be given
 over as the father has - provided the reverses
 be all in being - or as is expressed in the books pro-
 vided the candles be all lighted at the same time
 it is otherwise with a grant for years - a life estate
 is here considered greater than a term for years

every individual in the world is a
 universal term for me - for what is a term
 for me is not a term for him. I find no difficulty
 on the subject of the universality of words - I have
 written an essay on the subject - I have seen a
 hand in which I have placed an article I do
 not write, and find a term in a book and can
 I take it to be exactly and the same without
 any sense of such - but because I cannot let
 out of the intellect - and can I on the principles
 of the mind I have had a lecture in the and
 memory - I do not think the effect is the same
 in either case. There are certain cases in which
 one of these ^{thin} terms is an inheritance of which
 language writers speak - where a man upon making
 a provision - or in some other term & he
 situated in the position of a man, and he
 is a man. Thus, where a man has a son and
 a daughter, and a wife, and a mother, &c.
 he leaves his estate to his wife & his children
 and his wife & his children - but in order to make
 provision for his wife, he writes to her to
 receive her estate - then the wife, and the children
 take the estate & receive it, and the wife & the children
 are the same - but are very often different
 to me, for I do not make it in trust for the
 wife or the children, or for the wife or the children

or any one unborn - This may be done also
by deed thus suppose A has an estate which
he wishes to secure to an unborn child - say until 21 in
the 1st life remainder & thereafter in trust for his 548
unborn son & thereafter contingent remainder
This is called a strict settlement - if he had granted
to 21 in the remainder & then to a son in fee simple
there would be the estate in remainder & then in
the reversion - but now since trustees are in there
if he conveys the grantor cannot take a life
with a child the remainder in fee simple.

Estates at will -

This is called an estate at will - it is not a fee simple
estate - it is only a mere license to occupy the 549
premises - It is at the will of both parties - the lessor
may turn the lessee out when he will - or the lessee
may go off before if he chooses. In what way it is 550
terminated by the express words of the lessee - the words
are not when the premises were without the words indicat-
ing it indicative of an intention to end the lease 551
but if it be done off from the premises the lessee must
have notice before he becomes a trespasser. The lessor 552
need not use any words - if he turns his cattle in upon
the premises - or makes contrary to the agreement
it determines the estate. It is no matter what the act
of the lessee is provided it be inconsistent with the a-
greement. If he invade the premises & takes away

or impairs the crops - or through the wind or otherwise
 to him not manifesting his dominion over the premises
 is as much as to say, cool it - but if he reaps the wheat
 and carries it away he becomes a trespasser for the
 vice. He has a right to his crops. On the other hand the
 one. He may go at when he pleases - but he must pay
 the rent as he agreed - he may determine his estate by
 cutting down trees or exercising other acts of dominion
 in this state and in most of the other states ex-
 cept where is necessary to be settled in a will
 either written or by words - that he must remove or re-
 determine same, is right. The consequence of determi-
 ning the estate is that the act of the lessee is
 in that the lessee becomes a trespasser once a term.
 The lessee however is not obliged first to give a notice
 of determination & then another notice of trespass & re-
 move damages in case the lessee had done so. But
 he may regard it as a notice of trespass in the first instance.
 The lessee may not use any personal violence to him
 the lessor - but it may be done by a servant. I believe
 where the contract is for years the lessee has a right
 to cut & remove any crops not to be taken care
 to be paid. Lessee at will is bound to pay rent accor-
 ding to his contract if he has seen or the premises are
 a more. He has been so for many years and it has
 got him the lessee is not bound to pay any rent but
 if lessee leaves the premises at his own accord before

only the year it is to end - but it is not necessary
not to leave him, from year to year, in a whole year
there can be no apportionment of rent. It is necessary
any act to determine in a whole - he is liable in a whole
before making rent for the whole year. But says the
judge there is something else, it is a determining of the
rent. Suppose the lease is for a whole tree
this act determines the estate - but how can he be an
overlord in a lease for a whole tree? The rule
is that after he determines in a whole he is a freeholder
but here he does no act, after the estate is determined
for it is not determined till the tree is felled. The truth
is the first stroke of the axe determines the estate
and is decisive for all the rest. It is upon a whole tree
down a valuable orange tree - or the like in one stroke. - Lessee for
years by parol lease is a tenant at will. But it
has been questioned in Eng. where a lease is void and
the lessee a tenant at will how you are to get a term
rent agreed upon - It is now however settled that
the deed may be introduced to show how much was
agreed upon between the parties as evidence of a
quantum meruit

in 11th
5.

Estates at sufferance

It is a term in writing - from an estate at will created
but this arises from an implied or tacit consent of
the lessor that the lessee should remain in the premises
after his term is past and a claim

of her station in the world & her
 name & rank & position in the world -
 In observing that a freehold can never be in at-
 tachment - I should have mentioned that a free man
 sometimes the a freehold cannot be. Thus in a
 civil society the owner of the land is B - it
 is his duty to the state in accordance with the law
 to pay a tax - for he can have no other title to the land -
 namely of the state - this is the principle

of life estate - a variation of law it should have
 been observed that such an estate may arise after
 27 possibility of issue extinct - thus a devise to A & A
 & his heirs of his body & his present wife & heirs - if
 25-8 A dies without issue - it has an estate for life
 & is not terminable for want of other life estate
 men - as to devise in the state - the law
 made of course to make it more perfect - the law
 its provision is here made by statute in actual law
 but by custom & usage that it is done never ex-
 ist without the state made but is done in the
 law to the purpose of the law - it is necessary. It is
 true we call the estate waste but it is no more so
 the law is to be made such as letting
 the building - or the land - & the grower to build
 the law puts it in the hands of the law or the owner
 to go & repair for which he is liable to the possessor
 and enough to keep the estate in the law & the repair

devised to be an estate provided he married
 a lady by the name of Maud. The lady was
 did not like to marry any of that name - & so all
 the children of the estate - & he put the same in
 lady & by act of Parliament the same was
 altered & called Whipple - & an estate
 in fee simple may be created under an in
 branch. In this manner were the estates created
 in Pennsylvania under Penn - whether they are
 called fee simple or not is not known. But
 an annual rent was reserved - & the same was
 given - & into whose hands were the lands & a
 sign of the condition that the tenant
 pay the rent - & if not paid it is provided that the
 grantor may re-enter. - It is a fee simple estate.
 The same of the same in other parts were not
 in the same manner - but they are now almost
 all changed to paying up what is called the quit
 rent. As to the distinction between a condition
 annexed to an estate & a limitation. A limitation
 in common cases when called a condition is in
 two dimensions a limitation. Thus if a condi
 tion be annexed to an estate & upon the condition
 being broken the estate is forfeited, & immediately
 ends & shall so that no one except the owner coming
 on it rightfully this is construed to be a limitation
 but on the other hand if after the condition is broken

the estate does not end till the grantor dies, and
 a person does not die till he is dead, then it is said
 to be a ^{condition} ~~limitation~~. I have looked in the books
 to see if any rule may not be found
 which would give a precise distinction. Another
 rule I imagine I have found - which I have not
 seen laid down anywhere. If the grantor or
 grantee is made a party to some conveying instrument
 when the estate is to determine upon some event, form-
 ing the condition - then it is a limitation
 thus suppose I grant an estate to B & his heirs
 while he remains unmarried - here the word while de-
 notes time - and therefore makes it a limitation.
 But if the grant were to B & his heirs so long as he is
 unmarried - this is a condition and not a lim-
 itation. The grantee has a right to stay on the in-
 estate ^{as long as he may} until the grantor arrives himself to the
 condition broken. If we grant an estate to B & his
 70 like one who is married. This is a limitation - for
 40 I grant to B an estate, ^{he could} ~~provided~~ if he is to be
 10 that this is a limitation and differs not in prin-
 20 ciple from a mortgage - the two made of course
 30 in a mortgage one before mortgage, and
 40 in all the cases the remainder is given
 50 over to a third person it is a limitation what-
 60 ever words be used. The reason of this seems to be
 70 because the remainder man was not concerned in

the whole immediately void - & that
 the c^d does not immediately enter the condition broken
 then the remainder shall not thus be prejudiced
 & without standing all this separate judge nobody
 in possession of common sense can see any reason
 for the distinction between a condition and a sim-
 ulation. - A condition may be, such a nation
 as to be wholly void - and let the estate rest. it's
 void. The condition is to perform an impossible
 thing a grant was made on condition ^{to be defeated} that the
 grantee ^{do not} run 100 miles in a minute - or let
 the pacific ocean on fire - here the condition
 is void & the estate shall rest. Conditions may
 become void also by the act of God (i.e.) by inevita-
 ble accident - thus suppose a grant in estate to
 B & his heirs & assigns conditioned to be void if a war
 be declared within seven years by the first war. Now
 if before the time do war does it shall not defeat
 the estate. But now judge here notwithstanding
 this is the established rule not very much question
 the equity of it. The grantee it is true may not be in
 fault - because performance has become impossible.
 But the difficulty in my mind is - that the estate
 should be voided without considering the ground
 of the condition. The intention of the grantor may
 in one sense be defeated. It might have been by way
 of punning, mischief - and afterwards it scarce to be so.

obtain if the grantor by his own voluntary act
 makes the performance of the condition an
 prerequisite - As if a grant be to A. to have the land
 on condition that he will not marry B. & the man
 who marries her himself in this shall not defeat the
 estate. As if the conditions are unincorporated & be
 performed. As if a grant be to A. to be enjoyed for
 so long as he shall be single - these conditions
 need not be performed in order to make the estate good.
 This rule is founded in policy - It takes away the
 temptation to break the law. Again if the
 condition are repugnant to the nature of the
 estate, property - the estate shall vest & the condition be not per-
 formed - as if one grant to A. another to B. for life the
 estate conditioned that the grantee shall not
 alien it. The next thing to be considered is
 Mortgages

A mortgage is a security for a debt by real estate.
 When a man wishes to borrow money - & the lender
 insists upon some other security he is a lender
 would have the borrower give, instead of getting
 a bondman, give to the lender a piece of some
 real estate whose value shall be equal to or greater
 than the money lent - upon condition that this
 said estate shall be restored when upon the debt is
 paid. When personal property is delivered for the
 security of a debt it is called a pledge or pawn

In the old law, as when the land
 was only in fee simple, the mortgage was a conveyance
 of the land to the lender, when it was pledged, but it was in the hands of
 the lender, and called a mortgage. These kinds of
 mortgages were known to the Romans, & it is in the civil
 law that it was introduced into England. From the case
 the idea of mortgages in this country seems to spring,
 as such thing was known in the early ages of
 English jurisprudence. When the rigors of the
 feudal system had begun to be relaxed, when
 the people came to have more correct & liberal
 views, as to the alienable property of land & when
 commerce came to engage the attention of the
 great landholders, estates were alienated with
 such conditions annexed, that if there were no money
 were broken the property should revert to the lender in
 the mortgage or mortgage. There was before the
 Chancery system of jurisprudence, as we have seen
 If the debt was not paid at the day appointed by
 the parties the estate was vested absolutely in the
 grantee - it was gone forever from the grantor
 but if the debt was paid at or before the day when
 the estate was to be recovered, then it was to be
 restored to the grantor. In the state of the
 law, the court of Chancery came into existence
 with its own jurisdiction, equity, &c. - that it
 was necessary to have the assistance in the trial of
 mortgages, they in their primitive state of existence

[illegible]

40.
after the death of the husband the wife is entitled to the property
by the law of the country. But in some cases the wife is entitled
in quite a different manner. In some cases the wife is entitled
the mortgagee was considered as a mortgagee. In some cases
his wife was considered as a mortgagee. In some cases the
mortgagee. The husband is considered as a mortgagee. In some cases
the wife is considered as a mortgagee. In some cases the
mortgagee. But now the law is different. In some cases the
mortgagee, frequently in the hands of the mortgagee. In some cases
has no power only if the husband is dead. In some cases
does not. In some cases the law is different. In some cases
equal estate. But it does not. In some cases the law is different.
The will is not required to have the mortgagee in a
discharge. The estate is not. In some cases the law is different.
over redeems the estate. In some cases the law is different.
out the estate. In some cases the law is different. In some cases
mortgagee or the estate. In some cases the law is different.
sued was taken in the mortgage. In some cases the law is different.
In some cases the law is different. In some cases the law is different.
originally a mortgage. In some cases the law is different. In some cases
estate. In some cases the law is different. In some cases the law is different.
estate & holds the premises. In some cases the law is different. In some cases
the estate. In some cases the law is different. In some cases the law is different.
or does. In some cases the law is different. In some cases the law is different.
always the case that the conditions are in the same
instrument with the deed - but both instruments taken
together make up the contract - so where the conditions
are not in the same instrument with the deed

if you may there, but we have removed,
upon the debt as if there had been no such thing,
page. But in a great deal of cases, more, it
is made on a relation - on debt remaining after sale
and removal.

It is almost unnecessary to say, in the relation
to a mortgage, and it is indeed, the mortgagee
dies the heir after, for some time the estate is
decent. But if it is necessary to say, and it
is, and the mortgagee of the heir will be bound to
pay it. In the, instead of mortgaging the
fee plain estate, they frequently mortgage only a
term - or years - to avoid the risk of the mortgagee
estate being to die, the mortgage goes to the heir in full
and the right of receiving mortgage money goes to
the executor. But where a term is taken, most courts
say they have decided, and the executor. But
now the mortgagee estate is considered as more stable
real estate than a term, and it makes no
material difference in the respect.

The court is it necessary, having an interest in the land
mortgaged money, and a security for the debt, or more
valuable of the money is over all, and it seems a fore-
sight, as it will be directed - let the mortgagee be what may
be - the mortgagee should be able to pay it in full
and over - and the mortgagee will be able to
pay it in full, and there is a relation to the mortgagee.

1000000 - the very, amount of interest & principal
which is not to be paid up the day after the day, will remain
25 the same as it was before - they will not be
3000000 - and a quantity of interest will be paid as
35 the title. If a man pays in the same day - one
4000000 - he will be able to do so - it will be done
4500000 - thought to be a remaining the same as it was before
5000000 - with interest & not the same as it was before - it will be done
5500000 - kind of - it will be done as it was before - it will be done
6000000 - the same as it was before - it will be done as it was before
6500000 - the same as it was before - it will be done as it was before
7000000 - the same as it was before - it will be done as it was before
7500000 - the same as it was before - it will be done as it was before
8000000 - the same as it was before - it will be done as it was before
8500000 - the same as it was before - it will be done as it was before
9000000 - the same as it was before - it will be done as it was before
9500000 - the same as it was before - it will be done as it was before
10000000 - the same as it was before - it will be done as it was before

[illegible]

[illegible]

tenant in fee - the mortgagee may be in possession
and is deemed to be - but the reversioner or remainder
man may still have a right of entry for the
feudal form which was mortgaged during the
life estate - tenant in fee is alone bound to pay
down the interest while he holds the estate.

The dignity of execution is measured in the order
of the execution. Order of law being evidence of the
priority of property and more than the right itself &
therefore if an execution be made in a court, & then the
he has no more equity, & no right to say
that he is a creditor. But a court of equity may direct
the order of sale of the execution & then it becomes
a matter of equity - & is distributed to the creditors not
according to priority of right but to the value of the
claim & the debt to the last before an application to
the court & are the same as the mortgage
and not the same as the mortgage & the mortgage
and the estate and assets in the hands of the executor
are available - But courts of law & probate courts
adhere to the law & in the order of priority of
debts - all contracts are paid upon the same foot
ing. An execution may have to be paid on a security
of redemption - and for this purpose the office
may be used to the end - the court may make it an
order. This is merely formality - where an execu-
tion is made upon the estate the law is upon it.

mentioned in the mortgage & made in terms, may
 be in the execution made - application must be
 made & it is necessary, and also the order being made
 for the sale of the property, the order is made for the
 sale of the property - formerly it was ordered, the
 court - with the order - he was ordered to pay out
 according to the order - the order - but if it were de-
 cided to a person - when sold, there is no order
 - and the order of distribution seemed to be
 that the executor in the former case may volun-
 tarily sell it - without the direction of a court, &
 the latter application must be made to the court for
 the sale of the property - and it being
 a rule that where property cannot be sold at the
 price of the order, then the interference of
 a court is necessary, there is no order where there are no orders
 for the sale of the property - the order is made for the
 sale of the property, but it is not necessary to be made. But
 say, charge there - it would seem to me that where
 application may be made in a court, & also in a
 court of equity, arises to do it without the direction
 of a court - if the person does it voluntarily, with-
 out the aid of a court, it ought to be considered by
 a court of law, but as it is a court, and was necessary
 it is now established that whether the equity of red-
 emption is decided to be a court or any other, is not
 for the payment of the order - the order must be made

Subsequent mortgages are always to be ²⁷¹ ~~viewed~~ ^{considered} properly
satisfied before the residue can be distributed to them
the creditors. When the mortgagor is not a debtor 101
he must pay up all subsequent debts not charged prior
when the land before is a mortgage with a mortgage 102
redemption. The rule is the same, the residue must be
redemption. As the rule is that he must not be charged 103
with the debt of his own estate until he is 104
with the debt of his own estate. But if the mortgage is 105
a mortgage - the mortgage will be required to
pay that only to which the debt is a mortgage. 106
If two pieces of land be mortgaged - one in mortgage 107
with - & one of the debt create the mortgage in law. From
which the debt is required - the mortgage 108
shall not redeem the other. As the mortgage is 109
with. If a man purchases the mortgage interest 110
in a house upon the land - he let the whole debt for 111
which it was a mortgage - the mortgage is 112
a mortgage - but must pay the debt 113
But if otherwise if the mortgage be a mortgage in law
the mortgage is a mortgage in law. ^{the mortgage} 114
There are several instances in which 115
mortgages are - which purchase is to be 116
the debt of a mortgage is to be 117
once mortgaged in the name of the mortgage 118
where the mortgage is not. The case is the same 119
if the mortgage is to be a mortgage. The case is the same 120

mortgage - in the West, most of the land is called
 joint. When in cases - the title is in the mortgagee
 and mortgagee - In these cases, it is by the parties
 to make in the form of a mortgage - it is
 then, as in the case of a mortgage, the land
 is the same as the mortgage are made in this country. No
 question of title in these are matters, as if the mortgage
 holder, claims the debt whenever it shall be paid, there is a mark
 in the mortgage that he shall have a mortgage. In where
 the mortgagee has a title to the land, the mortgage
 being of the different nature of the mortgage. It is
 well known, that in the case where a man
 mortgages his land, the mortgagee enters - the mort-
 gagee never more, was admitted with the mortgage
 and was the mortgage - when the land were given
 up to him, he would have the land, after a short
 time, when the mortgage came to view, the
 mortgagee, being a mortgagee, he had a superior
 claim to the land, and he said that poverty and
 sickness were sufficient reason for the mortgage
 and the mortgagee, and he said that decision was
 correct. However, the mortgagee could not
 recover the mortgage. Voluntary of the mortgagee
 mortgagee will never defend the title of the mortgagee.
 In the case of the mortgage, the law in this relation
 to mortgage is a matter. We have no doubt of the
 intention of the law, and the mortgagee, and the mortgagee

179
from the mortgagee at the time of the first mortgage. If the mortgagee makes a second mortgage of the same land without informing the subsequent mortgagee of the prior mortgage: but if he pays the second mortgage at the time assigned he may redeem the first mortgage. There is little need of such a statute in this State, say the Judge where our deeds are all required to be recorded - A man may satisfy himself by going to the records. The devise of a mortgage is not real but the same right as the mortgagee has. His interest is considered only as personal property - Were there no devise - it would go to the executor - but the legal title devolves nominally to the heir - the heir in fact has no interest in it - he is trustee for the executor & holds it as such. If the mortgagee cannot redeem he must pay the debt to the executor & by filing a bill against the heir to redeem - the heir will be decreed to reconvey. is devise of a mortgage makes it as a chattel immediately. It does not take effect personal property, but it is personal property. Thus if a horse be given to one in a will - the legatee does not take it immediately - he has no right to it - it must first go to the executor - & if he does not want it to pay debts with - then the legatee has a right to it - but the mortgagee's interest devised does not go to the executor immediately - it is not liable for debts - more to the point.

Mortgages - The same may be made in any time
 after the term of years or day - and it is
 not necessary when it is made to be made - It has been
 decided whether a devise without three witnesses
 would be a mortgage - there is no case on the
 point - but as the legal title as well as the chattel
 interest go together in a devise - it is presumable
 that the will must have three witnesses. It has
 447 been decided whether the words "all my moveables" in a
 devise by the mortgagor will pass a fee simple or on-
 450 ly a life estate. This question is now settled and it has
 451 been determined that the estate shall be the same
 as the chattel interest without the word "moveables"
 or "moveable". It has therefore been decided that
 the mortgagor's interest would not pass in a devise
 made by the words "all my moveables" hereditarily
 454 but that there is no deviation if the mortgagor
 455 has no words "hereditarily" or "hereditamentally" but
 had mortgages - then the intention of the testator
 is thought to be manifest that the mortgages should
 by these words. Where the mortgagor devises the
 debt as a sum certain - the devise takes no inte-
 rest away - but the interest goes to the executor. Thus
 456 if a devise be of debt and the debt be paid and
 457 the devisee has an interest in arrears - the devisee can
 sue for the debt & have the arrears & the executor. This
 may be made to be made as not being inconsistent

On the death of the mortgagor the legal & real property
title of the premises vests in the heir - and the e-
quitable title remains in the executor - the heir has
nothing to do with the mortgage he holds it
only as a trustee for the executor & mortgagee - he
cannot exercise until the executor neglects &
disadvantages - & the time in which the pre-
mises & the executorship terminates - on the, the
mortgagee & executor - they will have the legal &
equitable title - & the executor to his heir & assigns
the legal & equitable title will not be divided -
when the mortgagee files a bill to redeem he must
satisfy the mortgage to the executor - unless the mortgagee's
interest passes to a third person, & arise - for here
the money must be tendered to the executor - and
the heir or devisee may be compelled to receive it.
I apprehend say, judge there I would have been
better - & the executor of the law is violated - and
the legal & equitable title of int. lat. mortgage is the
originally in the executor. If nothing is said in
the mortgage deed about the debt being paid to
mortgagee or executor or money, it is to be
paid & the executor. If the condition is that
the mortgagee shall pay to the mortgagee his heirs
or executors the money, may be paid to the heir or
to the executor at the death of the mortgagee. But
if the money is to be paid to the heir or his assigns it is only

Mortgages - trustee or bailee for the executor. If the mort-
 gagee has paid the mortgage or the mortgagee and
 assigned with it the debt, then the money is paid
 100 paid to the assignee or purchaser. If the assignee made
 101 no more to the mortgagee it is in his hands - the
 102 next mortgagee - if he has the money before the estate is
 103 settled, he may pay it to the assignee or assignor at his
 104 election - but if the estate is not settled before the
 105 4th of June next to the date the debt is due then
 a trustee for the assignee. If the mortgagee does not
 106 derive the income from the debt he is a trustee for
 the mortgagee about the debt he is a trustee for the
 107 estate. If the mortgagee is a trustee for the executor and the
 108 estate is settled, the executor is a trustee for the mortgagee
 to the executor - in some hands it is a trustee for the
 109 executor of the debt. If the executor is a trustee for the
 110 mortgagee this is the same - the executor is a trustee for the
 111 mortgagee has not an independent title - and the
 112 next mortgagee - if the executor is a trustee for the mortgagee
 113 next - may be sold in satisfaction of the debt. The executor
 114 may also sell the debt in satisfaction of the debt. The executor
 115 may also sell the debt in satisfaction of the debt. The executor
 116 may also sell the debt in satisfaction of the debt. The executor
 117 may also sell the debt in satisfaction of the debt. The executor
 118 may also sell the debt in satisfaction of the debt. The executor
 119 may also sell the debt in satisfaction of the debt. The executor
 120 may also sell the debt in satisfaction of the debt. The executor

but the mortgagee cannot by any and legal process
in the mortgage deed release his equity in the alien
mortgage or discharge of the mortgage with 581-83
in interest - this is not a rule in the mortgage or prior
deed - I too have made a deed of mortgage 2005
which is a joint mortgage and a security - there can be no
discharge in one bill - but equity is not 208
and the execution of the deed.

As to Intest. upon debt secured by mortgage
deed. The same principles are applicable to these
as to common law debt - there is however some
nice distinctions in the rulings. There will be
a man agrees in the mortgage deed to pay 4 per cent
interest upon a sum of money - but if he does not pay
the interest at the ordinary rate of 5 per cent, then
the mortgagee will not be allowed to sue for the 4 per cent
but only 5 per cent - but if the agreement had been
to pay 5 per cent - but if he does not pay a sum - the
mortgagee need not pay but 4 per cent. Here the
court of chancery will not interfere - but will allow the
lender to sue for 5 per cent if the money be not 1574
paid at the day appointed. When a strict examination
of these cases has been made there can be no
doubt there is no difference in principle. It strikes my mind that the former rule is not equi-
table and being no longer - the advantage of the law is
now in the hands of the lender - I am willing to bear money - 80

"Mortgages" so long for so much - but after that I can do better with
 no money & no where - & if you will pay me 5 percent you may
 call it longer. That the money is but a small sum
 & it may be gathered from a subsequent decision
 that were the mortgagee entered into a contract
 which required to pay one percent more interest for
 the money, was not held by such a time - here the
 court is necessary, & it is to be seen if it is.
 In one case also the court refused to discharge
 a debt when there was no formal agreement, but where the
 debt was in the hands of the mortgagee.
 The interest if not paid before is due, when
 the debt itself is paid. Upon the basis of the ori-
 ginal - the mortgagee can never be obliged to
 pay compound interest. However, if the condi-
 tion the mortgagee is to pay by such a time & if
 not paid by the time then to pay compound in-
 terest - this will not vitiate the mortgage but
 may be relieved against by discharge. - It will
 a court of law in a bond or a note - they will
 not suffer a man to let his matter be in execution
 till interest & an interest unexpectedly diminish
 that there is in fact no impediment on the part of
 the payment are made upon a bond it must al-
 ways be sufficient to the interest - just as the fact of
 the fact of applying the proceeds to the principal. &
 if one bond was paid at the end of the year the bond

pays 48 - it does not reduce the principal & the principal
 nor is the 28 remaining interest & it added the
 principal - but the 108 only remains when in-
 terest is due & added in sum. The interest does
 not upon a mortgage bond nor become prin-
 cipal in many cases. Thus if the mortgagee
 or assignee - in the amount of principal & interest there
 is the mortgagee consents thereto - the principal 140
 & interest 40 must be paid when interest 135
 But if the assignment is merely assignee between 140 ad
 the mortgagee & assignee the mortgagee shall not 320
 be bound to pay interest when interest 135 is due with
 consent to the assignment - but the mortgagee 271
 shall never be obliged to pay interest when interest 135
 would be due consent to the assignment. This 108
 equity can not be altered until the mortgagee 135
 Interest may be added to the principal as above 271
 the mortgagee - if a bill against the mortgagee 140
 to account - for here is the matter & decree of the
 Court do account & it is affirmed & it is not then 135
 the amount becomes a judgment. The case 722
 of infant is an exception to the rule. The same 271
 is continued to the case where the mortgagee goes
 to foreclose - for the interest & bill & decree 140
 it will be the same. If the parties get together 271
 voluntarily & settle & liquidate their account 40
 and the parties sign the same - interest upon 271

charges - interest shall not be allowed - but if the
 189. parties have written a special agreement allow-
 ing interest when the liquidated account - than
 190. it will allow to same Dec 1st - But any a-
 191. greement to pay interest when entered this made
 192. will not be binding if attended with a promise
 of money. The expenses of letters testamentary also
 193. draw interest from the time they were made - &
 194. also if the mortgagee has been obliged to defend
 the title of the mortgage in law - is allowable
 195. costs & interest thereon will be allowed. & has
 196. been observed that tenant for life is obliged to keep
 the interest down. But tenant for life is not
 197. compellable to keep the interest down - nor to con-
 198. tribute for redemption - But all the burden
 come upon the remainder Dec 1st. Where B. & C.
 are joint tenants. If the first tenant for life has
 the legal title in fee and want the land - & the 2^d
 want the legal title but has no money to purchase
 of B. - C. may with the assent of B. & C. & the
 199. court make a decree for redemption of the land
 200. & the 2^d tenant for life shall have the land & the
 201. first tenant for life shall have the money & the
 202. mortgagee shall have the land & the 2^d tenant for life
 203. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 204. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 205. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 206. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 207. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 208. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 209. shall have the money & the mortgagee shall have the land & the 2^d tenant for life
 210. shall have the money & the mortgagee shall have the land & the 2^d tenant for life

do they say in Eng. But it is otherwise. (222) For as it
 here. It is an accident to be dealt on & liquidated by the Court
 between the mortgagor & first mortgagee a second stage
 mortgage is not usual, inasmuch as the first is
 almost always in. Where the debt and mortgage
 are of a great amount an annuity will be made
 (a) Where the annuity is in possession and the rent 20th
 & profit is greatly exceed the interest - the surplus 584
 will be applied to the principal to reduce it.

As to Foreclosure There are two kinds of fore-
 closing in Eng. One is by bill in Chancery to sell the premises - and the
 other by writ of foreclosure. The former is never done in
 this country nor in Eng. when the mortgagee
 is in possession. But where the mortgagee is in
 possession the Court of Chancery will sometimes
 appoint the mortgagee & sometimes a third per-
 son to sell the premises as a trustee and carry the
 money into court - The surplus after the debt is paid
 shall be retained to the mortgagee. There have 365
 been some attempts to get a foreclosure before the term
 having is out but there is no case to be found 252
 where the mortgagee in such case was succeeded. Nor
 after a foreclosure the mortgagee can recover 76
 in the mortgagee's title - except on the ground of 14th
 something posterior to the foreclosure. The next 584
 stage may pursue three remedies at the same time

Montague he may bring such against the mortgagee
 sue up the bond & petition for a foreclosure.
 480 who may foreclose - if the heir of the mortgagee
 brings a bill for a foreclosure - he will recover an
 order to foreclose the execution however may
 if he is placed in a judgment - but the heir
 must pay over the amount of the debt to the Ex-
 485 ecutor & then he shall have the land. & his heirs
 & assigns forever. & seems to be by the statute of the
 28th Hen. 8th the mortgagee dies his heirs may be
 490 foreclosed. Where there are a number of persons
 a term of years & one wants to foreclose he must not only
 495 sue in the mortgage but all the rest of the mortga-
 gees whom he wants to foreclose. Those whom he
 500 does not take in will not be foreclosed. The
 505 mortgagee is to decide if he & his heirs die - & need
 not sue in the other mortgagees. The law as to re-
 510 spect the foreclosing infant has something
 515 peculiar in it. Infants may be foreclosed but
 520 they must have a day in court to show cause
 525 why not to foreclose. They shall be allowed
 530 six months after they become of age - & if they do
 535 not show sufficient cause to open the foreclosure
 540 the law is absolute & forever - it becomes absolute
 545 but their defence is under certain restraints & con-
 550 ditions - The account taken before the mortgage is made
 555 cannot be reversed & set aside - But he may

show any error upon the face of the decree &al properly
 If an application is made by the mortgagee to sell
 all the premises - & he sells the same - he is ob- 154
 liged to give to the vendee a deed. - But if the mort-
 gagee be an infant he may, after infancy 205
 annul the sale of the premises. When
 the mortgagee is a woman - coverture can be 504
 no objection to a foreclosure. 352

of a Shrine foreclosure It is difficult to lay
 down any precise rule which shall reach all
 cases - or causes of opening foreclosure. Fore-
 closure is sometimes opened by the express 910
 direction of the court - & sometimes by ap- 153
 plication of law. Thus it is regarded as a piece
 of fraud - if while the creditors of the mortga-
 gee are trying to have the estate sold - the mort- 210
 gagee petitions & obtains a foreclosure - and the
 court will upon application open the foreclosure
 sometimes the foreclosure is not in fact opened
 but enlarged - giving the mortgagee further time
 to pay the debt. - as in case of inevitable accident 204
 such as could not have been foreseen & avoided
 thus where in this town the court had set a day for
 the payment of the debt - or be never foreclosed - the
 mortgagee set out seasonably enough to pay the
 money on the day - but being taken sick on his way
 the money was not offered till by his friends a few days after

Mortgages. Foreclosures will not in general be obtained for the disparity or disproportion, there is to the value of the mortgaged premises. However there is one case where there was a great disproportion & the debt also of great amount & the court ~~granted~~^{enlarged} the foreclosure three times on the ground of the difficulty of raising so large a sum of money within so short a time. The said mortgagee in this case made an application in the first place for an enlargement & was accordingly enlarged to the time he set. When the time had come he could not pay & petitioned a second time for enlargement promising never to come again. However he did not then pay at the time & petitioned a third time & the court enlarged the third time but made him sign the decree & promise never to come again.

As to Welsh mortgages there is no foreclosure. Foreclosures are obtained by operation of law not on the ground of the mortgage debt being paid but from the conduct of the mortgagee.

When the mortgagee dies when the bond is due foreclosure. The foreclosure will not prevent him from recovering on the bond but the money he brings the suit. The foreclosure is void so long as the mortgage is turned upon its face again. But yet if the security is defective

A foreclosure is decreed - The mortgagee's bill does not
 lay out upon the land and the mortgagee's bill
 will be owned if he will in open court enter a
 remittitur upon the judgment & the value
 of the land. If the mortgage is defective &
 the mortgagee make application to sell and
 it is sold - yet the mortgagee may sue upon the
 bond for the money under a remittitur. *Chapman*
 100 *mortgage* 100 *then* 100 - *Chapman* 100
 100 and devise the same to A & B - A shall retain
 hold a lease mortgage to the benefit of B. In an 100
 alleged to this & one leaves to A a piece of land 100
 & B - including he had no title purchase & sell 100
 to B - A shall have the lease & B the reversion
 Court of Chancery will not readily lend an ear
 to petition for opening or enlarging, foreclosure & for
 when the parties deliberately agree to a foreclosure bargain
 sure - where the mortgagee seems to have been
 admitted & the mortgagee has come into possession
 & made improvements. It is held clearly by
 some authorities that a foreclosure never will - & can
 be opened many years after so as to accept of it
 or so especially in over-value. When decreed
 in a foreclosure the court never orders any
 but the original debt which was originally secured
 not to be paid in order to save the land to the mort-
 gagee.

46

It is not meant that the wife shall be left
in the equity of redemption, but in the law of
equity. For if the mortgage were made before her
marriage & she became the wife of a person who was
not to be charged. Some were when she could
not bar herself of her equity of redemption, but she
was by joining in a mortgage ^{before} her marriage, & as
soon as she became a widow & lost it until she found
will redeem. In this country where we have no
law of equity she may lose her right of redemption in the same
premises. For if she will redeem with the reverse &
not by joining in the mortgage. So also she
may out of her equity made before marriage in the
lien of her husband by joining in a mortgage. But
if the premises were not before her marriage
& she joins in a mortgage it does not bar
her right of redemption. So if she joins in a mortgage
conveyance with her husband it does not bar her
husband. Whenever she joins in a mortgage that is
her husband's in equity & she is to have one third
of the money & the other two thirds the other
two thirds before they can redeem. If a part of her husband's
premises is mortgaged with a wife & her husband &
she is to have one third of the money & the other
two thirds before they can redeem. There is a case where the wife may redeem the mortgage
for her husband. The wife the husband, for her husband. No
one can give her a mortgage & she can redeem

[illegible]

North Act - in 1794. & 4 & 5 Geo. 3. c. 12. s. 1.
 6 - in either of the former records - but the in-
 quiry in England it does not follow that it is among the
 6th previous mortgages - it is not possible
 to be a valid notice. It is all the 3 & 4
 to be an acknowledgment in, not public deed in
 the, but without being recorded - and in
 the meantime of the same time & it is
 10th to be a deed recorded - but not, however, in
 11th, with some care, it is to be said to be
 12th, that notice of the mortgage once made
 did not not avoid him anything. But from
 the 13th to 14th is entered in recording - then
 15th suppose of the same time & it is to be said
 16th to be a deed recorded - given a deed of the same
 17th in the case of 8 & 9 the same occasion returns
 18th to be said to be the same time & it is to be said
 19th who put the deed upon the record immediately
 20th producing before the Court - but was a conveyance
 21st to be said to be the same time & it is to be said
 22nd will be said to be the same time & it is to be said
 23rd that it is to be said in the same time the
 24th to be said to be the same time & it is to be said
 25th that is a deed of execution is applied
 to the mortgage. It is to be said to be attached to
 26th an execution - the office is required
 to record the execution in the same time & it is to be said

and also in the case of a mortgage
But if the execution be not recorded and the
Debtor sell the premises - the purchaser is not
bound - because the law is, a purchaser does not
complete the title in the premises - but the
giving of a deed does ~~not~~ ^{I must be satisfied} complete the title
it is necessary to record the deed before the
title is complete. These cases stand on distinct
grounds. Under the Stat. of 1792, relative
to mortgages are void as against a subsequent
purchaser for valuable consideration. But
suppose the purchaser knows of the mortgage and
evances or releases it would seem reasonable
that he should not bind. But the Stat. says direct-
ly that a voluntary conveyance is binding
as against purchasers - or that it binds not only
but a purchaser to make it his deed and
give no more than the debt and interest
and principal - the next branch of the title is

The manner of execution. Real property
The manner of execution is two-fold
Descent and Purchase

Descent

Descent is that title by which the estate is
transmitted after the death of the owner
from one generation to another

I have previously said that I must still in-
 sist on the importance of the
 doctrine of descent of real property. This has
 been a subject on which the Statutes are, from
 1733 to 1833, almost unchangeable and it is
 a subject on which the law is still the same
 under the method of distribution of personal
 property made by the Statute in 1800. It was formerly an
 important part of a lawyer's education was well
 studied. But since the year 1833 there is one
 subject which is not so well understood and that is
 the importance of the doctrine of descent. It is necessary
 that the doctrine of descent should be carefully
 studied - as you may be embarrassed by ques-
 tions of law and equity therefrom an incorrect
 idea of the doctrine of descent. For the purpose
 of giving you a more full idea: this subject
 has been more than written in - all the lecture
 books continue to write as I go along - in which
 you will have a more correct & precise view
 of the subject than those who have preceded me.
 I have observed that a Statute of descent of real
 property comes in the same form as in effect
 the same as the Statute of distribution of
 personal estate. - Hence it is a law which
 says the same thing where a Statute there is con-
 sidered the same thing as in the Statute.

our law might & where the construction
of the law is latent

Under the Stat. 22 Geo. 3rd where a man dies
leaving a widow & children the widow & all
take one third of the personal estate and the
remainder is to be distributed to the children and
the representatives of a widow. But if a man
die without issue leaving a widow the widow
shall have one half of the personal estate and
the residue shall be distributed to the collateral
relations. It is to be observed generally that in all
cases where those who take are in equal degree
of kindred from the intestate - they take per
capita & equal shares - but if there are some
more remote in descent - they take per stirpes &
not, per capita. The general rules for determining
the degrees of propinquity - or in finding out who
among the relations is to take & who not - are as fol-
lows - viz. From the intestate to the son in the descen-
ding line - is one degree - from the son to the grand-
son is two &c. & in the ascending line from the
intestate to the father is one - from the father to the
grandfather is two &c. - and in order to determine the
proximity of any collateral relation - the rule is to
rechen up to the common ancestor & so down to the per-
son required. Thus to find out in what degree a brother
&c. stands to you count up to the father who is the common

Decem's mother - calling this one - Then, dear to
 the mother's mother - as that the brothers and
 sisters not being in the second degree - I so
 do the same for it. The Stat. of Wm. II. ma-
 terially changed the condition of this rule by pro-
 viding that we are to be aided without issue
 during a mother's brother & sister - the mother
 indeed & taking the whole estate as she would
 make the Stat. in full shall take an equal
 share with each of the mother's sisters. - So
 that if all the mother's sisters be dead leaving
 children & a mother - the children do not
 take as co-heirs with the mother. The Stat.
 is in full - but they take her share - thus if there
 were a brother & sister - Son Dick & sister who were
 all dead leaving issue - the issue would take a
 share of the estate as if divided into
 four equal parts - the mother & three sons &
 the children. Son Dick & sister are and
 there is only one - but if the mother had been
 dead the distribution would have been four parts
 & each of the children & Son Dick & sister would
 have one - It is provided by Stat. that none shall
 take by representation with brother & sister children
 who have been previously adopted & the children
 of a deceased person shall take as if they were
 the children of the deceased person. - Thus

Deceits - The husband and wife the administration
 of all the wife's choses in action not reduced to
 judgment and after her death are all said to be
 distributed the residue to her next of kin. But
 by the 30th count the husband after having made
 such a will is entitled to the surplus. This
 latter case has never been executed in this - nor
 in most of the United States - so that in this State
 and in all the others where a similar statute
 is not enacted the husband as administrator
 of his wife's estate must after paying her debts
 distribute the residue to her next of kin.

2^d Bism. It is provided in the act of distributions that the
 5th children who have been advanced in the lifetime
 10th of the testator shall have such a share with
 15th the estate as together with the advancement will
 20th be equal to the share of the next. Marriages con-
 25th tinuations of income or annuities & set up a child are
 30th 35th advancements - & also annuities given to com-
 40th 45th mon after the grantor's death - commission
 50th 55th purchases in the army are advancements
 60th 65th But small pecuniary gifts given as soon
 70th 75th 80th 85th 90th 95th 100th 105th 110th 115th 120th 125th 130th 135th 140th 145th 150th 155th 160th 165th 170th 175th 180th 185th 190th 195th 200th
 210th 215th 220th 225th 230th 235th 240th 245th 250th 255th 260th 265th 270th 275th 280th 285th 290th 295th 300th
 305th 310th 315th 320th 325th 330th 335th 340th 345th 350th 355th 360th 365th 370th 375th 380th 385th 390th 395th 400th
 405th 410th 415th 420th 425th 430th 435th 440th 445th 450th 455th 460th 465th 470th 475th 480th 485th 490th 495th 500th
 505th 510th 515th 520th 525th 530th 535th 540th 545th 550th 555th 560th 565th 570th 575th 580th 585th 590th 595th 600th
 605th 610th 615th 620th 625th 630th 635th 640th 645th 650th 655th 660th 665th 670th 675th 680th 685th 690th 695th 700th
 705th 710th 715th 720th 725th 730th 735th 740th 745th 750th 755th 760th 765th 770th 775th 780th 785th 790th 795th 800th
 805th 810th 815th 820th 825th 830th 835th 840th 845th 850th 855th 860th 865th 870th 875th 880th 885th 890th 895th 900th
 905th 910th 915th 920th 925th 930th 935th 940th 945th 950th 955th 960th 965th 970th 975th 980th 985th 990th 995th 1000th
 1005th 1010th 1015th 1020th 1025th 1030th 1035th 1040th 1045th 1050th 1055th 1060th 1065th 1070th 1075th 1080th 1085th 1090th 1095th 1100th
 1105th 1110th 1115th 1120th 1125th 1130th 1135th 1140th 1145th 1150th 1155th 1160th 1165th 1170th 1175th 1180th 1185th 1190th 1195th 1200th
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 1305th 1310th 1315th 1320th 1325th 1330th 1335th 1340th 1345th 1350th 1355th 1360th 1365th 1370th 1375th 1380th 1385th 1390th 1395th 1400th
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in giving a child a liberal education Real Property
 especially if found conveyed in the ~~entire~~
 which would be considered an advancement & some
 limitation is given to a child by his parents. When 50
 years or even 40 years have passed the real estate
 is no longer considered

as to the distribution of real estate in this
 state one state in the descending line is exactly
 the same as the state of Connecticut - but in the a line
 line & collateral lines the personal estate legitimate
 with a certain exception in a real estate case
 one way is distributed in one manner while
 that real estate is not distributed in the same
 kind or in the same manner. The one kind of
 real estate is called hereditary estate and is that
 which one acquires by descent from an
 ancestor or deed of gift. The other kind is cal-
 led acquired estate and is that which one acquires
 in any other way, namely by descent from
 an ancestor or deed of gift, as to the latter kind
 does that, suppose that one should take the same
 on the same manner. The hereditary
estate is that which is inherited - if none then it
 the father & sister of the ^{deceased} ~~deceased~~ ^{representative} ~~deceased~~ ^{representative}
 kind of the hereditary & there are no hereditary estate
 of the kind which is the hereditary estate estate
 others - if no parent then it the father & sister

Suppose Sam. Dick, & Sally, both of the whole blood
 are dead, & no one is authorized to take the
 parent's position - then the whole blood
 shall inherit - John Doe & Jane Doe are
 co-heirs of the whole blood & the mother is
 dead leaving co-heirs children & Jane Doe - & the
 child is born - child A will take a share of the
 but if Susan Doe be living - she will take the whole
 in exclusion of child A the children of John Doe - he
 cause no the estate at all - I dare not say that
 child A can take by representation. But as before
 the mother is dead - then child A as well as
 before - they will take the estate in equal shares
 as next of kin - but suppose it is read leaving Doe
 his children by this change in the statute. D & E
 being representatives of child A & Jane Doe are
 next of kin next of kin would take as next of kin
 child A's father would have no son. But in another
 change of the statute it is said that none shall
 take by representation after the children of
 brothers & sisters is the grandchild of both
 co-heirs can never take by representation but
 all are grand children of both co-heirs and
 there are none they cannot. This inconsistency is
 all removed by placing the words equal represen-
 tatives as before mentioned.

Suppose Sam. Dick, & Sally, both of the whole blood

Descend - and be contented with relative. To the children
 of the person from whom it came & their heirs & re-
 latives. & for want of such evidence to the
 better evidence of the person from whom it came
 and on failure of these it is to be distributed in
 the same manner as other estate in which is not
 an interest of a particular person or persons
 ancestor or ancestor. The object of the bequest of the
 whole is the father and mother of the testator
 but they must have the qualifications of being
 the blood of the person from whom the estate came
 the words "blood" are used in their primitive
 to the sense which was first assigned to them - for we
 may consider a kind of the blood of a man
 that was not directly derived from him. How
 so understand the words of the statute there is no
 provision made for the distribution of a whole
 which came to the testator from the person from
 whom the blood is derived in the dis-
 tribution of estate that cannot be said to derive or
 descend from any ancestor or ancestor. Thus if the testator
 said "I bequeath what I owe to him by debt or
 in bond" these things - being a better evidence
 of descent than the word "blood" in the case of the word
 "blood" means merely descent from the person from
 whom the distribution of the estate. For the law
 requires first that the person to be should be both

sisters of the intestate & Richard Thomas,
 July - but it also requires that they should be
 the blood of the person from whom it came &
 their qualification the same. And they have not it in
 Thomas means himself since died from - for if
 the intestate can have no others and sisters that
 are usually descended from his wife. The primi-
 tive meaning would be, the intention of the
 testator. - viz. they were to have it by the word
 in a sense than is expressed by the words "shall be"
 used in a construction and description. With
 this meaning attached to the term - the estate was
 be distributed to Thomas & July - for they are rela-
 ted to their uncle George from whom the estate
 came by devise to their brother John. And in this
 sense the words were used in before in the Stat. of
 Edw. III. where administration upon estate was
 devised to the next of blood. *crimine de sanguine* (to the next
 of blood.) In practice when this statute met where
 has been understood the next of him & so when
 the English books speak of this statute they inter-
 prete that administration upon an estate of an intestate
 person is to be granted to the next of him and it is
 manifestly used in the same in the Stat. of Edw. III.
 It is apparent under this statute that if the estate
 came by descent devise or deed of gift from the pa-
 rent - it is to go to the brothers and sisters of the

and that you intended that they were of the
 blood & therefore for me at least the estate cannot
 John & Susan Rowe are a brother & sister of the
 wife but they are not of the blood. They are
 from under the estate as me & must be rejected and
 because they are of the half blood so I am aware
 & I believe that I have not been admitted to a
 share. But he is of the blood & the law is for me
 under the estate.

The Case the same way I am & I am aware. Some
 left children of the wife & child of the wife
 will be distributed to the estate one for each of the
 children of the wife one for each of the children of the
 wife in full. The estate to be divided in four equal
 parts & I believe take for the wife. While there
 will be distributed to the same persons in the
 same manner with the addition of him who
 will take a share the estate being divided into
 four equal shares.

The Case the same way I am & I am aware. Some
 children of the wife & child of the wife. Here it is stated that I am
 makes no part of the estate & that it is not to be
 distributed. For in this case there are no share as
 long as there are brothers & sisters of the wife & their
 and their legal representatives. If there are no
 distribute upon the estate that the children
 of the wife & child of the wife can not take a share.

Descendants to their parents - Blackacre must take nothing
by the express provision of the Statute & therefore
will be divided to one fourth & so to one fourth
& to one fourth to D & E & the other to them - the
claimant take none as before for the same
reason as before. But if the claimant take
Dich & ally take as represented. They must
take Blackacre per capita each an equal share
for the claimant to a share in the same degree
of kindred & according to the 2^d & 3^d decisions
when the claimant take per capita - all in equal
degree would be taken to take as before George
& Edmund & would also take as before. It is inclined
& that while claimant who is in a nearer degree
is excluded - I think might make that such
a distribution is therefore inadvisable. If
we proceed upon the ground that Edm & George
may take as represented & per capita & then
exclude George & Edm. and also take as with
out any absurdity we then intringe a rule that
in no case to be taken in the best law be. as is
perpetuated - viz when all the claimants are
in the same degree of kindred they must take
per capita.

IVth & last is also clear - In this case occur-
ring this opinion expressed in the former case
Blackacre must be distributed to them all -

John & Susan Brown - for there are no Real Brothers
 Brothers or sisters of the whole blood or equal
 or descending - or parents - & by the adoption
 of the law the estate is given to the first
 issue of the full blood - But if no issue
 take a whole estate & so on, for as for John
 they take the whole estate - & her capital they
 take it with George & Edmund & the children of
 John who is nearest to her than there are
 it will be more to distribute it as in the last
 case

The law is the same but same is dead - Susan
 Jane Blackmore will be distributed & John &
 Susan Brown - for the same reason as in the
 one case & if these reasons are not correct
 would go to John & Susan & the same manner
 as there would not - and where will go to
 John & Susan if they take it as real estate & so
 then Susan - but if they do not so take & I think
 they cannot there it is directed to the child
 of the person from whom it came - but in
 the case there are no children of Susan Jane
 or any legal representatives of them - & then
 must go to the further of the person from whom
 it came who in this case are George & Edmund
 the mother & father - they will therefore take
 the estate.

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for the will are in the third degree and Real Property
in that to preserve the whole to the last issue
while as we will go to Edmund for there are no
brothers or sisters of the same legal representa-
tives of the same living who are of the blood of
George whence the estate came nor any of the
issue of George - nor any legal representative
of them who must then go to the next male he-
re of George & such brother to Edmund
the same only & the 3^d & 4th are dead & they
all left no issue - Blackacre goes to F & Edmund
the children of A & B & C are excluded for repre-
sentation is not admitted after the male line
above - while as we go to Edmund & his issue
the same only & the dead leaving no is-
sue & Edmund is dead leaving no issue - Blackacre
Blackacre must go to F & C who are the nearest in
the third degree and take it & the children
of B & C of Edmund who are all in the fourth de-
gree & excluded in that representation is not
admitted in the same manner for there is no brother
of F & C or legal representative of them living
nor any brother or sister of George living and in
such case it is to be distributed in that manner
the same only & the dead leaving no issue
the same only & the dead leaving no issue
the same only & the dead leaving no issue

to George as brother to the person from
whom it came.

2nd If we were to come by the same person
they would agree to it. In this case it will be a
fair and equitable thing to consider of the
person from whom it came.

3rd Distribute the same with care - as the same
as it is when it is. Dick & family were read - their
children were their representatives - then it is
a fair and equitable thing to consider of George as a
read - the distribution will be the same in the 4th
case & in the 5th case they will be read & it
will be.

4th If the same in the 5th case it will be
it will be read without issue - it will be the
local representatives of the same - then the same
like the same & will be read & it will be indeed
and it will be that it will be read & it will be
the same as Dick & family - as long as there is any
issue of them however distant they will ex-
clude all other claims - then the same & it will be
more & if they have no issue & it will be a
issue of the same such issue will exclude
all other claims.

In the State of Maryland - the distribution of real
property with the same in the same & it will be
the same as the same & it will be the same.

The count in station - & them are said to have killed
 some what more, & some would have taken
 & indeed it all are said to be together, & voices
 here, & there, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,

The said count of station are said to be
 all together, & some would have taken
 & indeed it all are said to be together, & voices
 here, & there, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,

The said count of station are said to be
 all together, & some would have taken
 & indeed it all are said to be together, & voices
 here, & there, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,

The said count of station are said to be
 all together, & some would have taken
 & indeed it all are said to be together, & voices
 here, & there, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,
 & so on, & so on, & so on, & so on, & so on,

Dowry

It has been observed that all estates acquired
 otherwise than by descent devide or sold &
 gift from some person or persons were con-
 sidered for the Dowry. Dowry are however
 for the most part conveyances which the law
 considers under the denomination of purchased
 estates. It is probable that the practice of dowry
 existed among our Saxon ancestors who derived
 the practice from the Romans who settled in the South
 part of England. But upon the introduction of the
 feudal system dowry was abolished as being
 inconsistent with their constitution. The feudal
 lord could have no dominion over his vassal's property
 after his death - else it should come into the hands
 of some one unable to do the military services
 required. The doctrine of descent came soon
 into use & led to the custom who would gen-
 erally be better prepared to do these military ser-
 vices than any of the rest of the inherited branches of
 estate. These restraints upon the alienation of real estate
 were partially removed by the introduction of
 fees - so men were allowed to dispose of a benefi-
 cial estate & let the tenant be bound to do the
 thing which was first introduced by the gift
 and last of the clergy. - Since that time this method

Devise: to acc. make landed property to the ben-
 efit of monasteries & convents - The nobility
 and common people looked on this with con-
 cern & procured the Stat. 27 Hen. 8. to be en-
 acted by which the legal estate was transferred
 to the equitable so that the terre-tenant had
 nothing at all - but the legal & equitable estate
 vested in the testinque use. This put an end to all
 devise at once until the Stat. 28 Hen. 8. by
 which all persons having land in fee simple
 may devise it to any other person or persons ex-
 cept corporations &c. Devise might now be made
 merely by a ^{written instrument} ~~written instrument~~ ^{or by a will} ~~or by a will~~ ^{or by a will}
 or it continued till after the coming in of the
 ancestors from Eng. but the Stat. 20 Hen. 8. cal-
 led the Statute of Wills & provisions not only requir-
 ed the devise to be in writing but also that the
 accompanie with certain other solemn acts of
 the testator such as signing it in the presence
 of three credible witnesses &c. Devise are sometimes
 called ambulatory dispositions & presently in
 usage these have & have not any called a limitation
 unless it is because they are revocable instruments
 of devise to have no effect till after the testator's death.
 It is a disposition of real property, while a will or
 testament properly so called is a disposition of per-
 sonal estate. The estate in the former vests in

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mediately in the devisee - the executor (or administrator) has nothing to do with the real estate. & certain class of creditors may on reliance of a bill sue & recover of the devisee. But devisees are not liable for simple contract creditors - unless specially creditors have satisfied their debts out of the personal fund. In this and other States of the Union the real estate does not in the devisee get on deficiency of assets of the personal fund - the executor is empowered & directed to sell the real estate - or enough of it to pay the debts and the simple contract - as well as specially creditors come in and share in proportion to their respective debts. But the law of devise ^{in England} differs materially in another respect from that of this country - & devise takes no land only that of which the testator ~~was~~ actually seised at the time he made his will. & rule of law that land was deemed very inconvenient in this country where vast tracts of uncultivated land constituted the chief part of our real estate. & soon in law was therefore thought to be sufficient to pass the estate in a devise as in a deed. and besides this we having adopted the mode of recording deeds & precluding the necessity of such return as is required by the Com. Law. States for years being personal property in the

Devises - view of the law was always decisive. The
 Stat. of wills operates on more but fee simple
 a term for years can only be created out of a
 fee simple. Our Stat. which is nearly a copy
 of the Eng. Stat. will permits not only fee sim-
 ple but any other less estate to be devised. The
 same words in a devise will pass a fee simple
 as are necessary to pass one in a deed. In a
 deed it is always necessary to use the word heirs
 to create a fee simple in the grantee - no circum-
 location - nor any words however expressive of the
 grantors intention will pass a fee simple unless
 the word heirs is used. As to the good sense of this
 rule the judges have nothing to do with it. If
 the grantor had an antipathy to the word heirs &
 omit it - the grant would be defeated. But in a will
 it is otherwise. If the words in a will be devised show
 an intention to give a fee simple will be suf-
 ficient to convey such an estate. The word *verum*
forever &c. - &c. the word *eterna* - if the testator had in the
 lands a fee simple & toward estate would be sufficient
 to pass it. In short the rule is that if you can find
 out what the intention is, it is to be followed. The in-
 tention is to govern if consistent with the rules of
 law - provided the thing intended to be done is con-
 sistent with law - the rule does not relate to the term
 used in the devise. Thus if a person should say under the

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to entail a house & express his intention. Real property
then ever so clear, he could not do it. The law
knows of no such thing as intestine personal
property. So if one should undertake to give a
fee simple unalienable his intention could not be
followed, - or the law knows of no fee simple that
cannot be aliened. As if the tenant would create
a life estate out of an estate for years - his inten-
tion would be defeated because the law considers
a life estate greater than an estate for years the
year so many years - & to say that a greater estate
may be carved out of a less estate is a contra-
diction in terms. In some of the States where
a ~~similar~~ ^{similar} ~~question~~ ^{question} is raised a
very important question is often in discussion
This is whether joint tenancy may be devised. The
States exactly make no provision - or may decide
that a tenant's share all persons holding in joint ten-
ancy may devise. This will vary the decisions from
those in this under the old Statute. Our Statute
has precipitated a question of the kind both by a-
firming estates in joint tenancy - or rather con-
sidering them as tenancies in common & also
in enacting that the tenant may devise all his
interest in - or arising out of land. By the Eng-
law there can be no devise of joint tenancy on account
of the survivorship. It has been observed that the

Devise - devise in law must be actually served
 in order to pass real estate in a devise - but this
 rule is not admissible in this country - for the
 reasons before mentioned. The devise may be
 will give power to another to make a disposition
 of his property - & whoever takes under
 this power of disposition takes under the will.
 The Stat. of Hen. VIII required the devise not only
 to be in writing but also that it be published in
 order to show the intention of the testator. But
 since the Stat. of Hen. VIII, the devise may be
 I apprehend in the publication of the will
 is necessary than to sign it in presence of 3
 credible witnesses in the manner before - by that
 Stat. I was once questioned whether an instru-
 ment in the form a devise would be a valid will.
 The court held that it was good as a will. - It is
 no matter whether the instrument begins with
 First the words In the name of God Amen & know all men
 185 In either case it must have the requisite poin-
 190 ted out in the Stat. - Where a deed of this kind con-
 195 taining a testamentary disposition is delivered
 200 with an intention to vest the property in a death
 205 it does not pass immediately - but will not be valid
 210 If a second devise be made - dispositive of the same
 215 estate, differently from the first - it operates as a re-
 220 vocation. But if a devise be annexed to the first

[illegible]

[illegible]

Thus as to the form of a will in the Real & Personal
 estate. The statute is that a will is not
 valid unless the testator in the United States
 is a citizen & a resident having in his object the in-
 herent power of disposing of his property. The statute men-
 tions imposition upon on their death beds—
 begins by stating that all citizens thereof must be
 or by that time shall have been in the U.S. Thus far
 it introduced no new law except in places where
 by the custom of the place a man may devise
 by a parole declaration. — This Stat. reached all
 these customs & made it universal that devise
 must be in writing. The next thing required is
 that the will be made that the devise must be sign-
 ed by the decedent or by some other person in his
 presence & by his express direction. Thus if one
 does it another in the same manner as the decedent
 or he does himself in the view of the public — the
 signature may be such — blind or by the initials, &c.
 that we cannot write. In the next clause it re-
 quires the writing to make his intention to be
 described in the presence of three credible witnesses with
 whose names are to be set to the will as subscribers. 368
 witnesses, each party in form is once, and — any other
 form is sufficient — expression of the testator's
 intention. Thus an instrument made in the form
 of a deed provided it have the requisites of a will

The will at the bottom of the page. Read, perhaps
these were the court's advice to the jury. For
it would be better to have a letter from a Law
man that we had some authority with
regarding the will. The judge was not so much
inclined to think there was no will in the fact. But still
in such a case it appears that the will
was written by the testator himself in his
own writing. It is not to be taken for
granted that if the testator was in an
accidental emergency in the room at the time
it is a case of sufficient warning and he had
written the will & the jury would then have
to make it for me later. It is not to be taken for granted.
But now the judge has said we get a jury with
the witnesses and not see him sign his name
unless perhaps, if they were present the whole time
he wrote the will which is most correct in my
mind. The judge was then very much
contented with the signing at the bottom and
in the presence of the witnesses. But it is now
said that was not. At the same time a case occurred
where a will was not signed at the top or
bottom, but the name of the testator was there & the
witnesses ^{but it was sealed} the court on one side and the jury
that sealing was sufficient. What is the law
and they it is clear from the facts and the law

[illegible]

27

The main thing in this case is that the witnesses must be
established is that the witnesses must be able to
name the instrument which they saw & the
date - It is not necessary that the testator did in
fact see them write like their names - his eyes
may be shut - or the handwriting may be so different
in style & yet the facts be in good - In a case
where the witness is a testator - and signature
given but not able to write their names - and
the door between the room & that where the witness is
has - having given evidence in it is that by reason of the
distance in the room he could see them sign &
their names - the court in this case held it to be
a good attestation. This is sufficient to exclude the
other matter that no one can testify to what he
saw through a window - because as is said - The differ-
ence of position from the witness to the place
may greatly decide. It is the door between the witness
room where the testator lay & where the witness is. His
signature & names - were given - The testator might
conveniently see them write their names & have
- as also if the witness sign their name in the room & then
go to the kitchen & easily observe it - but as
the testator by reason of the distance could not see them write
the in fact the witnesses were close the whole time
yet it was held a good attestation. So where a woman
that she ~~had~~^{an} affirmative complaint was shown in a

575
Devises carriage & horse & harness
the witnesses could see the will & the will was
made & the instrument - the testator said it was well
drawn & that the witnesses were all present & in his
presence & that the testator was a man of sound mind
and where the testator was tested & extremely anxious
288 The witnesses at the time of the execution of the will
directly in his presence & he was then in his
the court will in both cases that the will was
1820 not well executed within the Stat. limits. So if
740 The witnesses at the time of the execution of the will
first were present at the time - or if the testator be otherwise
evidence established in his own presence & the
Don. time of the execution it is not well executed.
In proof of this there was a question whether
or the will could be proved after the execution
with the witnesses - and it was proved in fact
after the instrument that the witnesses had their
names on the will - but it could not be proved that
they subscribed their names in the presence of the
testator. It is difficult still to maintain & therefore
in order to prevent wills from being destroyed by this
means - courts have established it as a rule that
the witnesses shall be sworn need to be subscribed
in the presence of the testator unless the contrary be
expressed. It is a little curious saying so & how
how the rule first originated. —

The first case of the kind that happened that morning
the court in deciding the circumstances of an
eminent lawyer being one of the counsel in a
matter - of considerable importance - and the
fact they would never have witnessed a divorce & the
only in the presence of the testator - for the court
had held that it will be sufficient to be present
another case came up where the divorce was not at-
tended by a lawyer & here it was that the court said
that it did, & so the divorce was signed in the
presence of the testator.

The 2nd. also requires that there be three persons
to witness, as witnesses - & so that is a question
of three witnesses - & the witness in this case was in this
fact that he was assisted with the words - In a case where
we made a divorce - with two witnesses & the witnesses and
afterwards discovering that three witnesses were re-
quired he added a third in which he made a di-
vision in some, formal, & so forth - which order
was executed with two witnesses & one of them was
the same who subscribed the first will & so the
other was not. The first will not being present
at the time the second was executed there was in-
fact but two witnesses that could testify to the iden-
tity of the first will - & upon this ground the court held
that the divorce was not well executed. But the rea-
son of the decision was said by the court to be that

Devise is that the first devise was absolutely void and
 54 therefore could not be set up again by the will.

55 But says Judge Moore if the ^{will} had been presented
 56 the time of the execution and attestation of the will
 57 it - I do not see why it was not well executed - nor
 58 has been decided that if the will or second will

be on the same paper with the will - it would be void
 59 the executed in the manner last mentioned. I have
 60 seen a case where a man made a will of real
 61 property - not a house but a farm - then made
 62 a second will of the same property - he made a will

63 referring to the devise & execution of the first - the devise
 64 not being present at the execution - which would

be void, attested - the court held the devise was
 65 void - but even the case there is a difficulty in
 66 reconciling the decision with the principle that the
 67 testator in making a devise may refer to another
 68 paper - containing a distribution of property &
 69 not executed according to the al. & str. & per. &
 70 distribution can be taken between an
 71 executed devise & any other writing - and the
 72 will - legally executed - in point of fact it is
 73 considered a matter void - what law - said as well
 74 as that these cases show that - a man may make
 75 a will & devise - referring to another paper - the
 76 contents of the will - a paper in a written form
 77 as described in the will - I suppose when found

is to be incorporated into & become part of the will. But, if a man
as a part of the will. In the latter case if a man
makes a will & refers to another will & devise
which as in the last case was not duly executed
The will or devise so referred to is not incorporated
and nor become a part of the second will & of
course is utterly void. In another case it appears
that at the execution of the will - the devise
not being duly executed - was present but not read - and
rolled in the presence of the witnesses & thereupon 584
the court said it was as if it were executed & read
it was valid. - But the judge here & the majority
in principle, whether the will be rolled up or not
in the presence of the witnesses - because the witnesses
are never supposed to know the contents of the will
nor is it ever necessary or advisable they can testify to
the identity of the paper. But if there is the least
doubt as to the identity of the paper - the want of reference to
that particular will - the identity is not being
sufficiently evident. If the will is in the same
piece of paper & attested with a will & the devise 585
is not to be read & not in such case the
court said it was sufficient evidence of the identity
& the will executed. It is also observed that
the witnesses must subscribe their names in the same
presence or in the same public view as the
testator. It now becomes a question whether the witnesses

Deed- must all subscribe at the same time. It is
 clear enough that this is unnecessary but the rea-
 son given in the *Book of Evidence* is not
 prob. and is incorrect. The *Book*, as is said does
 not require that they all subscribe at the same
 time. For the testator does not ordinarily sign
 the deed but once - now is it that the witnesses
 can all see him sign the instrument - so this is
 a necessity that it is not necessary to see him
 actually sign the instrument - but if the testator
 put his finger on the seal and acknowledges
 it to be his will & his hand writing & he is sat-
 isfied - & so the cases are - But *High Judge* *Heere*
 it is always best for the witnesses to sign all together
 before there are three witnesses which is the
 rule - two of which are one to the contrary of the
 evidence but at the reach of, *High Judge*. If they
 all signed at different times how can it be proved
 that the deed is witnessed signed it in the presence
 of the testator. The *Elementary* writers say that if
 two of the witnesses are dead & the survivor not
 sure knows not whether he will or did not sign it
 in the testator's presence - in such case the will
 cannot be proved - If the witnesses are all dead
 it will be presumed that they signed it in his pres-
 ence & the *deed* - but it is said the rule does not
 exist when one of them is alive. therefore it would

that, in the benefit of those interested. Real property
under will it would be better that the witnesses
be all clear. This seems to be absurd & I see no
reason I see not why the presumption that the
witnesses signed in the testator's presence is not as
reasonable as that they all signed in his presence.
The next thing the Stat. requires is that the wit-
nesses be ~~credible~~ ^{competent} as to what is necessary to con-
stitute a credible witness - & whether non-credibil-
ity can ever be proved by any thing ~~or~~ post facto
~~even~~ questions than which no other point in the
whole system of law has been so warmly contro-
verted both in the Eng. & our own courts of justice.
It is admitted on all hands that infants testamentary
witnesses are not credible within the meaning of
the Stat. But the question arises where the wit-
nesses are interested under the devise - thus if a
legatee or even a creditor whose claim is charged upon
the real estate be a subscribing witness. Lord
Mansfield who may be considered as being at the
head of one party contended that a legatee was
by reason of the uncertainty of the interest under
the will - a ^{credible} ~~competent~~ witness at the time of the
attestation - but after the death of the testator when
the will is summoned - by reason of his positive
interest he becomes incompetent - This positive
interest - like all other interests of witnesses

Devils - may be released, & the conspiracy, resisted
 from around him & they said. - In the second hand
 Lord Chatham was at the head of the other party
 & who seemed, before in being in opposition to the first
 consider the word 'reside' in the text, as important
 the same as the word 'conspirators' - & that the Legislature
 being non-credible & incompetent at the time of
 the attestation could never judge the incompetency
 of any thing except facts. That then the law
 might be interposed & secure men's rights when on their
 death beds they are surrounded with evil designs
 impostors - ready to take advantage of infirmity
 weakness & decay of mind & are in the state of death.

In considering this question says Judge Moore I
 take a different view of it from that of the Judges
 & the witnesses were non-credible at the time of
 the attestation & therefore that the non-credibility
 cannot be purged. But I contend they were credible
 at the time of the attestation. It is evident that they
 have no motive interest at the time of the attestation
 & if they did not know of these practices at the time
 they could not be influenced by selfish motives - no
 more within the reasoning of Lord Chatham - nay they
 could have no bias at all. As if the House of Commons
 were they have at most but an occasional interest - but
 does an expectation ever excite a motive in the great
 interest of humanity? Suppose an aged man

on a sick bed - has conducted at his own peril & expense
passing & his only son and heir is dying & in the
last stages of a disease he never intended - it is
very strong evidence that he will have the land
in a will if his better feelings & get stronger
perhaps he had already written his will and
expressly devised it to him - notwithstanding all
this it is no more than an expectation & no ob-
jection and no competency or credit will ex-
clude him from testifying. I am not satisfied
that a new rule should be introduced with regard
to the admissibility of witnesses - when the facts and
circumstances should be weighed - the more qualifications
are required, the better it is than if there were none and
be laid aside altogether but some caution could not be
avoided. The clause inserted undoubtedly was in-
tended to prevent future dissensions & then, and as
far as it related to issues - by concluding that all
issues given & submitted with the parties should be
decided - thereby implying that whatever the majority
be it three may be admitted not only to exercise
a service but also to testify in court & it would
be decided in ex 15 - to with two or more with 15. May
be - it was attempted in this case to establish the
will by the testimony of the two witnesses but they were
not interested in the devise. They testified that
that they & the other witness signed in the presence of the testator

Deceased - but without success. It appeared all in vain that
 he & his wife had all his debts liquidated & - he
 gave it to the wife & D. an annuity - besides a legacy
 to her, a mother & D. an annuity - D. was a living
 wife at the time - D. having & established the same time
 directed D's legacy to him & that of his wife - D
 would not accept them - & the court held the same
 not well accepted on this ground. At the point
 of interest & non-credibility did not come up. What
 the court would have said had the legacy been ac-
 cepted is uncertain. Indeed another question
 might have come up & that is - who in such case
 should tender the legacy. This will make much
 difference as the case may be because if tender be
 not made by the right person the tender is never
 obliged to accept it. It seems that in this case error
 was taken to the Exchequer chamber where the judg-
 ges were equally divided - four on one side and
 four on the other side. This point came up before
 Lord Hardwicke - once the witnesses being & credit
 it was now considered - Sir James's credit was ac-
 cepted to be taken - whether he was not a creditor.
 The committee admitted, as the majority reported, that
 he was not now a creditor - & the question became
 as to when he was - & so the credit was
 admitted - Now it was said that he was a creditor
 at the time of the attestation does not appear. But that

[illegible]

Devises - applied to the subject of poor people in the par-
 ish of Allendale - two of the witnesses were trans-
 ferred - & they were all in the vicinity of the parish of Allendale
 liable to contribute to the support of the poor at the
 time of the settlement - but before the trial it ap-
 peared that indeed all true taxable estate in the
 parish - & of course at that time had no interest
 under the will - Mr. Camden in several long argu-
 ments on this case in held that the devise was
 not well executed - but the three judges
 who sat with him held that the devise was well
 executed. This is the last decision on the question
 which from a review of the authorities appears to
 remain unsettled. Thus Mr. Pratt & the three judges
 with him together with Mr. Camden & six of the twelve
 judges in the Exchequer chamber held that the in-
 terest under the will could not be pursued & that cred-
 itability means the same as complete power. But on the
 contrary Mr. Ashurst & three of the judges held that at least
 some together with the three judges that sat with Mr.
 Ashurst & six of the judges in the Exchequer chamber
 holding in the whole twelve upon each side of the
 question - Harder then opinion may be collected
 from that case which may be considered as a kind of
 case. A legatee cannot be a trustee as to a part of
 the devise - He must be a trustee in the whole de-
 vise or none otherwise if there were a substitution

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witnesses - each having a lease - The same lease, or rent
might be established - without releasing the leases - and
it would simply be all the leases, but in one, or in
several of them - so that there would be three leases in
each lease - that would establish the lease
if they were allowed to do so.

as to revocation of a lease - there are two kinds
of revocation, implied. Express revocations are such
as are effected by some positive act of the tenant
indicating an intention to revoke the lease
as implied revocation is where some act is done
by the tenant - not directly indicative of an inten-
tion to revoke - as it is where there is such a change
of circumstances as to render the ground so
inconvenient as to render the disposition of the
estate. This may be the case in the case of a lease
implied revocation - But you will be better able to as-
certain its nature - from the rules & principles
of the law as to revocation. The law as to
express revocations has been materially altered
in Eng. & in some of the states of America - but the
law as to implied revocations remains the same
as at common law. as to implied revocations may
be either in writing - or merely by a verbal con-
fession before witnesses - but must always appear that
there was an animus revocandi. - This is a necessary
condition - because if a lease is not given

Devise - to see him - affirmed that you will not have any
 part of his lands or goods - & as the devise did not re-
 fer expressly to his will - the court held it was not a
 hostile revocation. But where the testator called witnesses
 a round his bedside & expressly directed before them
 that he revoked his will & directed his will to be
 before the said 3 persons a good revocation - The words
 used must not be in the imperative in order to
 effect a revocation as in the devise case I will re-
 voke my will - yet if he had said my will shall not stand
 it would be no revocation. It is general rule that
 where the devise has not altered by stat. the
 rule that it are always observed. However it seems
 that in the case where devise are expressly revo-
 ked by stat. & in writing, there being no clause
 in our stat. revoking, perjury - as in the case re-
 moving revocation by in writing - it seems that
 the ^{old courts} have departed from this rule by deciding
 as they have done that no devise shall be revoked
 unless by an instrument & that effect in writing.
 Wherever the devise makes a devise in violation
 with a previous devise - it operates as a revocation
 of such previous devise. Tho no words are made use
 expressly revoking it. In considering this as a re-
 vocation the court do not do so on the ground that it
 supersedes the first devise - but that it furnishes evi-
 dence of the alteration & the testator's intention

So that if the first devise is intended to be destroyed if a second devise is made before it is destroyed, that the second devise is contrary to and inconsistent with the first will. The mere existence of a subsequent will is itself no ground of a revocation. Thus where the will contained a special verdict - that one made a second devise & that it was different from the first, but that they did not know its contents nor wherein it differed from the first - the court held it to be no revocation. It was decided otherwise in the Court of Chancery but was reversed in the Court of the King's Bench - & this reversal affirmed in the House of Lords. There is a great difference between a revocation by a second will & a revocation by a codicil. Because a codicil is only a revocation in part to a will & a second will if inconsistent with the first in any material respect operates as a revocation in toto. If a second will be made under a false impression of facts - it is no revocation. Thus where one in his codicil devised what he had in a will to his now to be staining his wife - the court understood it to be a devise since in that character & therefore when it was discovered that she was married before & of course not his wife - the court held it was no revocation. In where one devised to a person & in his codicil stated he was a married person & was dead

Devise - & do devise it to be afterwards & who was that
 to be dead came home & the court said the devise
 to be under these circumstances was no revocation
 of the devise. - But where one makes a second de-
 vise under a false impression in point of law it
 will not stand; it is a revocation - Thus where one
 devised to his married niece for her separate use
 and afterwards in a second will stated that whereas
 as I am informed I cannot devise to my niece whereas in the previous
 devise I do devise her to - the court held that this was a
 revocation - merely on the ground of policy - to great
 a field of litigation would otherwise be opened. &
 where in point of the devise where a fact in his own knowledge
 & not upon the reality of the fact which he
 conceived him self to know - it is a revocation &c.

1791 If a man make a devise - & afterwards make an
 1792 other devise inconsistent with the first - & by which
 1793 the first is revoked - & then cancels the second
 1794 the first is set up again - But if there shall be an
 an express revocation of the first - it will not be
 set up - & devolved in estate - & afterwards made
 another devise - expressly revoking all former wills
 at his death the first will & the last will were found
 cancelled - but as it happened a duplicate of the first
 1795 will was found uncanceled - and the question was
 1796 whether this duplicate could be set up - the court
 held it could not be set up.

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as it involved no question - either in the law or in the
facts - as marriage and the
birth of a child - subsequent to the making of the
will - furnishes a good ground of presumption - for
change in the testator's mind - & therefore the law
will in such cases imply a revocation. No case
is to be found where a subsequent marriage alone
without the birth of a child has been held to be a re-
vocation. Sir John Leake says that marriage
alone & birth of a child subsequent to the devise would
in all cases be deemed a sufficient ground of re-
vocation. & so it has been decided - for where a man
devised to a woman & her heirs - & afterwards mar-
ried her & left her with child - the court held that it
was no revocation. Lord Kenyon has said that
every devise is made - with the presumption that if born
there will be no posthumous child born - so that
the very fact of having a posthumous child born is De-
vised to be a revocation. - But Lord Kenyon probably
did not intend it have it carried so far - for in most
cases - men will know as to the fact - & where it is
uncertain - they often devise upon condition that an-
other child is not born. - & made a devise & after
wards upon ^{marriage} ~~marriage~~ ^{marriage} made another devise - Some
which was not well executed - this was held to be a re-
vocation. - And where a man devised a part of his
estate and since the will was made - subsequent marriage

Devised a birth of a child ~~but~~ seems questionable whether
in such case the advice is needed. However says
Judge Keene that it is said that, ^{where} a mercantile man
suffered from a child operate as a total disinther-
ment of the child - there it will be a revocation - but

Done I apprehend that is not the true principle — For

38 If the donor had after receiving away 10,000[£] pur-
 chased ten acres of land & left it to his son to this
 day which after born child - it would not be a total disinherison
 even if in presumed courts would say it was a revo-
 cation. For a man of common parental feelings
 would not do so. A subsequent birth of children
 will not operate as a revocation & a will cannot
 be personal property - Thus where one made a will
 afterwards upon having a child made a small
 alteration of the decree ^{& confirmed the rest} by a codicil - The two chil-
 dren were afterwards born at the court said there
 was no revocation. If a woman makes a will & after-
 wards marries it operates as a countermand or
 suspension of the will till the death; the husband
 or rather till coverture is determined - If the hus-
 band dies first - the will revives & at her death takes
 full effect. But if the wife dies first - the will is there-
 by utterly destroyed. As some went under the name of
 tenants in common they may make a joint will but a single
 will will not. If a man make a will & afterwards he
 goes insane - there can be no revocation by him

71
If a man makes a devise & afterwards dies intestate
under takes to convey the same estate by deed but where
the conveyance is defective & void - here the the 450
conveyance is not good as such yet it is a revocable
evidence of the devise. This presumption of revoca- 100
tion may be rebutted. If a man devise to one & afterwards
& afterwards by a second devise to another. - Here
the former devise is revoked & the latter is void - 50
by the 4th. Statute - all devises of land & cor-
porations are declared to be void - except those for
charitable use. &c. - As where one bequeaths &
will devise to a woman & the other what he had in a
prior devise given to another - it was a revocation of
of the former & the latter could not take. about 100
all this says the judge & does not say the principle is
rather the application of the principle. It seems 50
to me say he it would be better if courts would put
a different construction on devises of this kind &
allow the first will to be set up in favour of the
first devisee as being the next object of his bounty.
The principles of revocation of a will of personal
property are the same as those of personal estate. still
of sale of personal property to a man's wife the 50th
the conveyance is void - so no one can convey to his wife
by deed while during coverture. yet a former devise
was held by the court to be void thereby. However it is
effective to act as a limitation in the future estate

Devises do not go upon the ground of a presumed ad-
tention in the testator's intention - and therefore
1700 the only inquiry is whether there has been a
615 actual alteration of the testator's estate. This
1700 where it is the practice in our business to
or to make a will - and we declare it to be a devise &
1700 afterwards convey it to the person named - as still
620 in such a case it is to be considered as a re-
creation not a devise in law. - But the legal
title to the estate being altered it operates as a re-
creation not a devise. The situation is
continued unchanged but merely because the estate is
altered. So if one devises land and afterwards his
625 son comes to it as the validity of the devise
is in question recovery on purchase by the effect
of the devise is a reversion. So if a devise
shall be in fee & upon marriage make a wife & then to
630 his wife - this operates as a reversion for tenant only
635 & B will take an estate in fee after the wife's life
640 estate is determined. In another case the devise
645 of the estate have gone in opposition & common
650 sense - as if tenant in tail devises in fee & after
suffer a recovery (ie) does the entailment with
the express view of giving effect to the devise - it is
655 nevertheless a reversion. So if one enters into a con-
660 tract to buy a line in the next year & then as he
should mention in his devise - & afterwards make

a devise and, ^{actually} being a line, it is a re-creation. As far as the devise is concerned with the principle of limitation and conveying the estate - but cannot have gone further in direct opposition to common sense & common principles. It has been decided that the Lord Hardwicke that where one actually had a fee simple & devised it as such - but upon coming into his death he was convinced that he had only an estate tail - & upon this suffered a common recovery - whereby the devise was held to be void. In these sayings there is that the real is void of this decision is not from 808. And the title was not changed and the estate was not estate - yet by suffering a common recovery instead of holding it by descent or deed - he held it by a record of court & in this way it at all the title may be said to be changed. As a man devise, to A - & after $\frac{1}{2}$ years covenants to convey to B - it was once said in law now at law as a reversion - but since Equity considers covenants or articles as covenants. The same as an actual conveyance - it is in Equity a re-creation. But the law will not operate a re-creation - yet where the legal title is in one person and the equitable title in another the equitable will govern & as to the legal title in such case will be no reversion. Thus if the title be devised devised in trust estate - change the trustee it is no reversion.

Devices - since it is now land again in the same area
 1116 general rule that if the title is in the land
 81 estate after the devise made it is a revocation
 816 but if he change the condition or beneficial estate
 840 after the devise is executed it is a revocation.
 840 On the same principle after the introduction of a
 1116 devise the devise of land was made & afterwards before
 the death of the donor the same land was mortga-
 ged - it was at first both in law & in equity con-
 sidered a revocation - because then the mortga-
 849-97 ge was considered as the owner of the land. But
 1116 now since in equity the mortgagee is considered
 151 the owner & of course no claim of title produced
 849-97 to the mortgage it is still by a course of decisions
 1116 that if the donor mortgages the estate devised with
 no revocation. Where one devise in fee & afterwards
 mortgages the same land for several years it was
 849-97 always held to be no revocation & so in the second.
 514 The reversion payable to the devise is true & there is
 revocation, but only if it is a reversion. If it is a devise
 to the devisee for years the same is not the case, but
 849-97 now a devise for years is not a reversion - It is actually held
 1116 in law that it is a reversion - This is a reversion
 849-97 will go to the devisee - it is a revocation only, but it
 should no matter as right of both is his own. He
 can't be trusted for himself & can't have said that he
 the devisee. For a limitation in the same way.

devise is no revocation yet if a man after said testament
 having devised it - makes a lease of the same land & the
 devise is commenced at the death of the testator & it
 has been held to be a revocation of the devise in such case.
 Thus far as to express & implied revocations - see at 20
 am. law. - The Stat. 20 Geo. 2 which relates only to test.
 devise's revocations - speaks of three modes viz. 1st
 first by a notice will or codicil or a good discharge - 2nd
 and will containing a clause of revocation. 3rd 30
 by burning cancelling or obliterating it. 4th
 There is a written instrument expressed writing 40
 the same & signed in the presence of three or more 45
 witnesses. Devisees may have been revoked in either
 case of these ways at law but never more for 50
 any parole declaration before witnesses & that
 amount should ^{then} have revocation before this Stat
 but with the Stat. that had enacted that devisees should
 not be revoked by parole it was necessary to
 declare how they may be revoked - But in all
 these cases the act must be accompanied with
 an intention to revoke otherwise it is no re-
 vocation provided the words can be discovered
 the more act of burning &c is not sufficient unless
 there be an intention to revoke - There must be
 an animus revocandi - a good motive. Thus where
 one after he had devised his will took up the will
 supposing it to be the same & he obliterated the writing

Devise - was a ^{man} who was ^{very} old & was ^{very} weak & was ^{very} near
260 death. At where the devise - thinking he had
265 an old will - began to cancel his last will & was
270 not to be a revocation. - This was held to be no re-
275 vocation. - But where one on his sick bed threw
his will into the fire & his wife catches it & puts it
held to be a revocation. At the slightest burning
or tearing where there is the an in-
tent to revoke is sufficient - as there is here. There
was because where the devise actually intended
to tear or burn the will all & pieces & yet be no
revocation. The animus - or avarina mind must always
relate to the devise which is intended to destroy. Thus
a man who was probably - had 5' making wills
drew up nine sheets of paper - signed it & had it le-
280 gally executed - but afterwards ordered another will to be
drawn - which was accordingly done & approved
285 but not executed. The devise began to tear the seals
from the first will. Upon seeing which the scrivener
asked the testator what he was doing - to which he
replied - the scrivener then rejoined and seized
him & told his hand informing him that the
290 first will was not perfected & was a mere
295 state - I am sorry say the testator and immediately
300 desisted from tearing off any more - Here it ap-
305 peared he was a man of law & a gentleman will
but it was under a false impression & a pret

and therefore the intent as to them is not necessary to be
expressed. - as to the third matter in which wills
are revocable by test - nothing need be said. It is
sufficient if the instrument be executed according
to the stat. of formal & solemnities - & declare the in-
tention of the testator that the devise shall be re-
voked. No form of words is required. The same
rules of construction apply to these as to wills.

They are usually called revocable wills.

As to Repudiation of Devise - It is essential to know
that a devise of land will pass no real estate except
what the deviser possessed at the time the devise was
made. It is otherwise with personal property for
if a man bequeaths all his personal estate in general terms
it will pass all the personal estate he leaves at his death
tho the will be made before he had acquired half the
personal estate of which he died possessed. But in the
case of real estate the deviser may republish his de-
vice after the acquisition of a new estate & then it will
pass the same as if the the devise were originally
made at the time of the republication. It is common
now words spoken or written whether reduced to
writing or not were a sufficient republication of the
devise of real & personal property. Cases of this
kind are numerous in the books - but I pass over them
as the reader - because both in England and in all the States
the Statutes have expressly required this to be done.

Devise - I am now making a real property instrument by
 for will & testamentary purposes are all the same. Devise
 is a real property cannot be republished or revived or
 now by any act indicative merely of an intention
 to republish - but the intention must be expressed in
 writing which writing must be executed according
 to the stat. or made a will when this writing
 is then made it operates to set up a will
 already made - it makes that will speak as of the
 date of the republishing instrument. There is no
 need of writing the will over again - but it is su-
 ficient to mention it or refer to it & declare it to be
 revoked. It declares to be all his real estate & make
 an after purchase a will - as much as com. law
 call witnesses, attested, signed & the intention of my will
 or I intend to make have my after purchase estate - & the next
 time I am a married man. But it is otherwise
 now - the Statute requires it to be in writing
 & signed in the presence of three or more. This stat.

1141 does not relate to implied revocation or will now
 401 does it relate to implied revocation. The law
 9110 as to there is as at common law. If a last will is de-
 78 clared it may be republished as at common law. This
 1011 is considered a common article. It is a question
 300 whether or not it is a will or whether in
 case of devise of real property a codicil annexed

thereto is a good republication. It is well known
 agreed on all hands that a codicil in order to
 be a good republication must be executed ac-
 cording to the rules of the law in force. It seems
 to have been a question before the Court whether
 a codicil on a separate piece of paper & not an-
 nexed to the devise was a good republication
 and in order to come at the true decision of
 the question - the cases before the Court ^{with the effect of a codicil} are as
 good as those since - taking them with the cir- cum-
 stances then requisite. It was held before 405
 the House of Lords that a codicil of personal prop- erty
 annexed to a devise was not a good republica- 103
 tion & the devise - & that after purchase and sale
 would not have there in. But see *Quigley v. Moore* 381.
 no ground for such a decision at that time. I get no
 apprehension the decision ought to have been the
 other way - upon this principle that where
 the codicil was annexed to the devise he must
 have contemplated it when he made the codicil.
 & in his codicil he had expressly contemplat-
 ed his devise it was held in a subsequent case
 that it was a good republication tho' not annexed
 to the devise. This last decision however was after the
 Act of frauds. In another decision subsequent to 116.
 this - where it devised to B. & having articles for the 43.
 purchase of land - made a codicil by which he took 495

Devise - notice of & confirmed his devise. ^{It was supposed that he} He afterwards
 made another codicil which took notice of the de-
 vise but was not annexed thereto. It was contended
 the first codicil would pass the land because the
 land was not then purchased but only an agreement
 of purchase - & it was contended that the land did
 not pass by the second codicil because it was not
 annexed but the court held that it made no dif-
 ference whether the codicil was annexed or not.
 So that it is now unimportant whether the codicil
 be annexed to the will or not provided it contem-
 plated the will & contained words manifesting
 an intention to republish the will or ratify the
 same. But this codicil must be executed accor-
 ding to the Stat. of Wills. This was the opinion
 of Sir Hardwicke & this says Judge Keene & is
 preferred to be the law now - but says he the
 cases do not all square with that, but this is in
 with the principles before laid down. It has been
 decided that where a mortgagee devised land to
 B - ~~enclosed & annexed~~ ^{made} a codicil of personal
^{executed with witnesses} property but not contemplating or confirming
 the devise - any more than merely mentioning
 it the codicil not being annexed it was held to be
 no republication. However says Judge Keene as to
 a codicil of personal property executed with witnesses
 on a separate piece of paper it strikes my mind

very strongly that courts may with more exact propriety
 justly consider this as a presumption that he
 had the will in contemplation & so consider it: But
 as a republication. & as did Mansfield seems to ⁵⁵⁴
 have thought in the case of Carelton & Griffin
 I do not follow of course that a republication
 of a devise will pay all the land purchased af-
 ter the devise & before the republication. Thus if
 a man devise to A & all his lands in Suchfield &
 afterwards purchases land in Harrington - this
 after purchased land will not pass to A - But
 if he had not restricted it to Suchfield but said gen- & s-
 erally all my lands - then that in Harrington would
 pass. If a man devise to his son Joseph - who dies 1740
 and he afterwards has another son named Joseph 1755
 - in case of a republication the last Joseph will
 take the devise. But where one devises to A
 & his heirs or heirs of his body - if A dies before the
 testator leaving a son B. the devise is limited for A & his
 heirs to take by descent if at all & not by purchase 239
 he cannot be described under the word heirs. this
 word not being descriptive of personae - but only of the
 quantum of estate. If the deviser has a grandson
 & in his devise calls him his son - the devise to the
 grandson by the denomination of son - will pass pro & hoc
 videlicet he had no son at the time of the devise. But 313
 where one devises to his son B - & also to his grandson C

Dev. 101 - if the son is alive & there be a thereto a republican
 cation: with the grandson he cannot take what was
 devised to the son. I have always considered
 this decision questionable, even Judge Rice on the
 ground of principle. You will observe from what
 I have before said that the effect of a republication
 is to make the devise previously made speak at
 the time of the republication & as it is agreed on
 & show all hands that if the devise had actually been
 68 made at the date of the republication a grand
 son in the case above would have taken under
 the description of son it would seem that the ar-
 guments of this decision are very questionable.
 A republication gives no vitality to a devise that
 101 did not belong to it at first - thus if the first devise
 27 was not executed according to the test. & the
 the republishing instrument be lawfully executed
 it will not help the original devise. Where a testator
 devised thus - the issue which I now have - and upon ta-
 king further leaves republished he will - the case
 30th doubted as to the word now - but there can be no
 16 difficulty in giving a decision if the will is to be
 considered as speaking at the time of the re-pub-
 141 lication. An infant after he comes of age may
 162 add the ceremonies required & a devise made in
 104 infancy & the devise will be valid. - The rules as
 132 to republication are the same at law as in Equity.

and to the same - generally all real property
may devise who may make valid contracts re-
specting real property - except those disqualified
by some express statute. When the Statute
said that all persons were equal - it did not in-
clude those expressly disqualified - I mean to put
real property as being on the same footing as
~~personal~~ ^{real} property was before the Statute. It is
said it could never contract about land. It is
doubtful whether at Com. Law coverture disqualified
a woman from contracting about her real property.
There were, however, instances at Common Law where the
wife had separate property, either by Statute or
some covert before Statute, but there is no
mention but that she may have devised, provided with
the devise were made without any consent of the
husband - or without his licence, carrying with it
an implied authority of devise. But the Statute of 1752
limited the coverture as to the wife's power of dis-
position. After coverture is removed the wife is in the same
position as she was before. Besides the above, I find
some instances where the wife is in a position where
it would be a real disqualification as to her power
to contract by the Statute. This is where an estate
is given in joint tenancy. It has before been ob-
served that where there were two more joint-tenants
and one died - the whole estate survived to the

Devises - surviving tenant or tenants - In claim therefore
 of the surviving joint tenants is paramount to &
 will prevail against a devise. The reason why
 joint tenancies continue to be not devisable is
 because at Com. Law land could not be devised at all
 & there were after the Statute with no devise could
 then be made except of such estates as the Stat.
 expressly declared to be devisable - what this Stat.
 expressly permitted to be devised were devisable &
 no more - nothing was said in this Stat. of wills re-
 specting joint tenancies. The courts therefore said
 the estate would survive to the survivors un-
 less the testator before his death had alienated it
 as he was always allowed to do. The Eng. Stat. which
 has been copied into the Statutes of most of the States
 but they have so amended the expression in the
 Eng. Stat. that joint tenancies are here devisable
 (ie) where they exist. In this State we have no joint
 tenancies - the maxim *quisquis bene dicitur d.* In the State
 of New York no joint tenancies can be created except
 the grantor has on intention to use the words *joint
 ten.* - for unless this word be used it is a tenancy in
 common. The Eng. Law requires that the devise be
 actually seized as the land devised in order to pass
 it to the devise. But in this country even then it is
 of great importance that the words be used. If there
 is any reason for this, more exists here

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This being a new matter - & a great one - I have not
written about it much - but I have written about the
law does not require more than a plain
condition. By statute statute in such case to be
intended in the decree & the decree made in
the decree & which a party, chance & will
decree - will pass without a requisition and then
under the general denomination of, under the
statute. And the rule is that in all cases where a
court of chancery will decree a specific per-
formance of an agreement to convey land - the land
will pass in a decree. But land purchased ^{with the devise money} not a B. L.
in pursuance of such agreement will not pass
without a requisition - except it be devised or
the intention of it.

any person may by devise or other means of al-
ienation create a life out of a greater estate &
then devise the reversion or remainder. Thus
John Hiler tenant in fee may devise to A for
years ^{or} life ^{or} life - to B in tail male or to male
special remainder to D in tail general & rem-
ainder to E in fee. & a man may not will devise
to another himself - but he may by will give pow-
er to one to execute a conveyance to another and
estate so conveyed shall be taken as if devised di-
rectly from the testator. Statutes & authorities
are of two kinds - viz. checked authorities & authorities.

Devise coupled with an interest. so makes an interest
 is where a man devises that in execution he will
 sell all his lands. In such case the executor does not
 hold the land nor does he take them in his official
 capacity - nor when he has sold the land & delivered
 does he hold the money as a settl. & any inquiries
 be made as to what becomes of the estate in the
 mean time (ie) after the testator's death & before
 the sale - the answer is that it descends to the heir.
 An executor may & he is to execute the power & de-
 vised to him & yet he may execute the office of Executor
 but tho he may refuse he cannot alienate this au-
 thority & sell nor release it to the heir. Wherever a
 power or authority of this kind is given & se-
 eral - it must be executed by all unless specially
 provided for otherwise. Powers are attended to
 by not making such provision - for if one or more or
 die - it cannot be executed by him or those who sur-
 vive - So if power be given to 2 or 3 with the con-
 sent of 3 in the life & 2 die the power is defeated
 & a man gives power to 2 or 3 or one or other
 of them - & one or two of them die the power can
 not execute the power. But courts will not see
 & hold that where one made a devise & appointed
 three executors - gave power to 2 or 3 or 2 or 3
 & one died - the court in this & many other cases will
 order that the power be executed by the surviving 2

This says Judge Peck's case is a man. But it is not
iust common of the true principle - & it is true in the
case where a power is given to an executor and
one of them died - the court said the executor may
execute the power. If a man devise his land
to be sold - it has been held that if the executor sells 1 Lev.
them the sale shall be good - but if the executor re- 384
fuses - the creditors may compell the heir to sell it
for the executor cannot be ^{compelled} ~~refused~~ all that
relating to powers is recognized in the statute
and a power coupled with an interest. the words express
its meaning, that if a man devise to his wife or
the purpose of bringing up a child till he comes
of age - it is a power coupled with an interest - or
if the child die before 21 years of age she retains
the estate - it does not go to the heir. If a devise
land to his executor to sell - it is a power coupled
with an interest but if a devise land to his executor
the executor it is a naked power. - This is a very 385
nice distinction & one that seems at first more
than reason - but it is taken by some authorities by 386
other writers - Maxwells in his note on the Statute 2. Litt
has displayed great reason & judgment in proving that
there is no ground for such a distinction
as to whether be a devise it is a power & interest
because there is no person that cannot become
a person in life and not rendered incapable by

There is some positive disqualification of state - may
 be a divorce. It requires no consent or discretion
 so that some courts - in some monarchies & courts, &c
 may take as well as others. will decide some if
 they cannot refuse to take the estate. The husband
 may decide it to decide given him to take & refuse to
 take it but so that the wife shall thereby be, pre-
 judiced by his decisions. An illegitimate child
 cannot take under the denomination of Son - but
 he may take by name acquired by reputation.
 though one devise to his daughter - the in legal
 contemplation she is not his daughter - yet this
 does not do no harm & at course she will take by
 the name of Son. An alien is qualified to take
 & to hold till since found by a legal exam-
 ination he is found to be an alien. Then land goes
 to the crown - The devise may take under any
 denomination or description provided it be such
 that this person can be ascertained - as provided
 it afterwards becomes certain. Thus where one devise
 to one of his cousin daughters who should within
 fifteen years marry a Hindu. the devise was void & he
 took good. So a devise to him to which shall have one
 first - to the Bishop of London - to the Sheriff of
 Middlesex - to the Mayor of a parish - to the wife of
 John Doe. to the husband of a widow - to the wife of
 John Doe. to the husband of a widow - to the next next
 of kin - the word ~~being~~ being known & known

In all these cases the devise was void because it was
not to be taken for uncertainty. It also where one had
four daughters & devised to his proximo de uxore in por-
tione consanguinitatis - the court in this case held that the
eldest daughter should take in exclusion of the oth-
ers. They fancied she was nearer than the others - in
repugnance to the well known principles of consan-
guinity & the method of reckoning degrees thereof.
One cause of the devise's not taking effect arises
from the obscurity of the expression. This is where
the intention cannot be discovered. Ambiguity is
of two kinds, viz Patent & latent ambiguity. The
former is where the ambiguity is discoverable from
the instrument itself. The latter is where external
circumstances render the devise obscure or ambiguous. 58
Thus if one devises to his son John - it all appears well on
the face of the devise - but somebody whispers in the
ears of the court that he has got two sons - both of the
name of John. - This is called latent ambiguity. So
if one devises to his children - & it appears he has
no children. So if one devises his estate called Black -
acre & it appears that he has two estates by the name.
These are latent ambiguities & parole testimony may
be admitted in all such cases to show the inten-
tion of the testator. But where the ambiguity or ob-
scurity is patent - discoverable from the face of the in-
strument no parole testimony can be admitted to show

Derives the meaning of the latter. - It must be col-
lected from the whole will taken together or not
at all. Thus a devise of the two best floors of Whitelaw
or to one of the two or to his heirs more than one or
to twenty of his poorer relations - will be void for uncertainty
as where one devised to his son & to his heirs & his
body remained to his wife, and if the wife married
his brother on condition that in every generation, &c.
particular testimony cannot be introduced to show
that testator intended his son should take on the
condition. So if one devise to G. & his heirs male
or E. it is void because the law knows no particular as
male heirs general - if he had said his male & his
wife - then it would have been all right - but the law
does not intend any such thing. So if one devise to
one in remainder - but if he die without issue then over.
In the two last cases the devise itself is not void but
only the qualification - as devise to one's next heir
is now nugatory - the term itself is a consequence.
If one devise to his heir or heirs for life - & create no
remainder over - the heir or heirs take an estate in fee-
simple immediately - not by devise but by descent.
A devise may fail by the testator's living after the
devise made & doing that to the devisee in his life-
time which he proposed to do by his will. Thus when
after having given several legacies - the devisee dies
or is above - then the testator's will binds him or hers with

& before the testator death the eldest Real property son get married - & his father build him a house. the legacy in this case would die in vacuo. The last way by which devise fails - is by creditors. Devisees were not originally by the com. law liable for the debts of the testator - but by the Stat. of Will. & Mary the devisee as well as the heir became liable to pay specialty debts. It is unnecessary to mention that where a will is totally unintelligible the devise is void. I have seen a long will signed the judge which to me appeared nearly unintelligible. - & I can once remember where the devisee after devising his land &c - proceeded thus & if the widow or the son wants to get apples to make cider with she must get them out of a particular orchard. In another will which I have seen says the devise the testator gave to his wife his love and if she would not take that he gave her his bible. as to ~~parol~~ testimony for the purpose of discovering the intention of the testator a little more liberality is allowed in favour of devisees than in deeds and other instruments - otherwise the rules are substantially the same as in other cases. It is necessary in wills as in all other instruments that the testimony to be admitted be not inconsistent with or as lawyers say trans will with the will. It is necessary to say yet so & so no consideration being introduced in the obligation. - parol testimony may be

Devises - introduced to show that there was a con. idem
 tim - for evidence of the kind compatible with or at
 least is not inconsistent with the terms used. But
 suppose I promise to give \$100 in consideration of a
 horse - I cannot introduce parol testimony to
 show that there was no consideration - this would
 be contradicting the terms of the instrument.
 Yet you may always introduce parol testimony
 in the question of proving facts which lead, collaterally
 to the contract & in this way avoid the terms
 expressed in the instrument. It is a general rule
 that no parol testimony can be introduced in the
 purpose of explaining a sentence used by the dec-
 orator in his will. It is not to be understood, however,
 that equivocal terms in the devise may not be
 explained by parol testimony - but it applies to the
 2d term sentence. Thus if I say I give, who is compelled to
 3d draw the devise makes such burden. That it is
 4th intelligible the meaning must be collected - from
 5th the whole devise taken together - & not from ex-
 6th traneous evidence. But where the obscurity does
 7th not arise from the words of the devise but from some
 8th thing without - parol evidence is admissible even
 9th the declaration of the testator himself, provided that
 10th be not shown to be will. If the devise is ambiguous
 11th & 12th is shown to be will in the lifetime of the testator
 13th by leaving a child to - none, no more, & so on.

I intended to use the word to be that the word
to be a word of course - the word to be are on
a word to be a word of course - not intended as a
demonstration of the word. - the following clauses 8th
and 9th are - at the time the word was made 15th
there being two words of that name the latter 16th
and 17th are - at the time the word was made 15th
and 16th a long time - private evidence may
be introduced to show that the word and term
was intended. - as the clause clauses 18th and 19th
are - it is a clause as the word is that a clause
may be introduced to show which was a clause
intended. - at the time the word was made 18th
remained a return of various antiquarian - 20th
in which - without using the word suorum or meorum 20th
in which the word may be admitted it is a clause
which is intended. - at the time the word was made 10th
it appears there are rather 21st and 22nd are - 23rd
it is a clause to show that the clause were known 24th
the clause - at the time the clause were a clause to be
and a word may be a clause may be a clause to be
25th the clause may be a clause may be a clause to be
may be a clause may be a clause may be a clause to be
26th the clause may be a clause may be a clause to be
27th the clause may be a clause may be a clause to be
28th the clause may be a clause may be a clause to be
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30th the clause may be a clause may be a clause to be
31st the clause may be a clause may be a clause to be
32nd the clause may be a clause may be a clause to be
33rd the clause may be a clause may be a clause to be
34th the clause may be a clause may be a clause to be
35th the clause may be a clause may be a clause to be
36th the clause may be a clause may be a clause to be
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80th the clause may be a clause may be a clause to be
81st the clause may be a clause may be a clause to be
82nd the clause may be a clause may be a clause to be
83rd the clause may be a clause may be a clause to be
84th the clause may be a clause may be a clause to be
85th the clause may be a clause may be a clause to be
86th the clause may be a clause may be a clause to be
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89th the clause may be a clause may be a clause to be
90th the clause may be a clause may be a clause to be
91st the clause may be a clause may be a clause to be
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94th the clause may be a clause may be a clause to be
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98th the clause may be a clause may be a clause to be
99th the clause may be a clause may be a clause to be
100th the clause may be a clause may be a clause to be

Deceased was meant on the second was as to the mistress son.
 The objection in this case may, perhaps, arise
 upon the fact of the devise - & it seems to me to be against
 the principle before laid down. A woman de-
 vised to the - one children of her cousin E.B. - & after-
 wards in the same devise - gave to the children of E.B. each
 a share. The fact was that E.B. had six children
 two by one ~~marriage~~ ^{marriage} & four by the other. The two first were
 210. well provided for by their father & father the latter
 216 were poor - & she had been often heard to say she would
 never give the two first a share. In the former case
 where she devised to the - one children of E.B. the
 court admitted the evidence to prove which was meant
 but in the latter case where she devised to the children
 of E.B. parole evidence to show that only one of the
 children were intended was rejected. Where one
 devised to the charity school at such a place - there
 1101. being two charity schools in that place parole ev-
 674 idence that the testator took great delight in one
 & had declared he would leave them something at
 his death - was admitted. So where the description
 114th of the devise bore as of a mistake is such that
 410 doubt were created - as where one devised to Sir John
 & Eg. Charles now in the service of the Duke of Devon
 415 the fact being his name was Richard - parole ev-
 dence is admissible - & there being sufficient de-
 scription without the name - the name was but surmise

As where one devised to the executor in Real Property
 in the form of L. & it appeared that the parish of St. 29. Can.
 was in the county of Ch. the Chancery the Rolls held 110
 that parol testimony may be introduced to help
 out the description. - As where one devised to his
 nephew Robert Stone - he having no nephew by that
 name - but one by the name of Robert Croo - the
 devise was upheld by parol testimony. But say, Judge 2 Ven.
 here I don't believe it would have been decided so 21.
 had his real name been Robert Stone. - perhaps the
 two names sounding alike had some influence.
 And where the testator after having devised to sev-
 eral women - made a further devise to one of them
 but instead of using her name as description persons
 made use of the relative pronoun 'or' - parol
 evidence to show which of the women was inter-
 ded was not admitted. If the testator uses an equivocal
 word - altho this is admitted a misdirection yet parol evidence 141
 testimony to show the testator's meaning is admitted.
 Thus when the French & Latin were so intermixed that
 the word *puer* which in Latin meant a boy came after-
 wards to signify a child either male or female - where 105
 one devised to several *puers* the court admitted parol
 evidence to show whether a male or female was
 intended by the testator. If the devise be named by
 a description - this may be shown by parol testimony - As
 if one would devise the devise by the name of Susan and

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Devises - devised to us in that name - did not mean
behold she shall take provided it can be shown by
parol testimony that these were the facts. The
time was once when the word estate was ambigu-
ous & uncertain. Thus where one gave all his es-
tate to or directing him to, as legatee, it was in-
ferred that if the word estate created only an estate
or life - the legatee accounted for more than the
value of the land - but on the contrary if the word
created a fee simple the devise would not be
taking the devise & paying the legatee. Parol evi-
dence was therefore admitted ^{the nature of the} ~~to show the~~
~~property of the time the devise was made~~
~~what intended to make a fee simple or right simple~~

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The word estate however is now no longer an am-
biguous term. - when used in a devise it always
means all the estate or interest in the thing described or inten-
ded to be described. So when the term used means some-
times one thing & sometimes another parol
testimony is admissible - thus if a man devise
his lands to his children it may be intended to
show the state of the family in order to determine
what estate term took - if Son had no children then
it is apparent that he had an estate tail & that the
testator meant by the word children - heirs of his body
but if he had a child or children then he meant son
estate in joint tenancy if Son & his children came an e-
qual share for life. If where the devise ~~was made~~ ^{land}

with the word, as seen to it upon an analysis - (Read) I regret
 then that he would not do so at the first opportunity
 the next year, he - as the word word, being used as a
 description of the thing, carried with a life estate & 2 Ex. Ca
 as the devise charged on the land amounted to 208
 more than the value of a life estate, parole test- 1858
 imony was let in to show the state of the property.
 & where one devised all his personal property to
 his wife & what value & c. & c. here parole testimony was
 admitted to show the value of the personal property.
 Word references are always to be construed in their
 legal technical sense - unless this construction would
 render the devise ridiculous & absurd & make it com-
 mit with the intent of the testator. - Thus, in the devise to
 of his house in London called the Bull-tavern. If the
 devise is construed per se without regard to the state
 of the property, lawyers would say that it took only an
 estate or life in that building & that the word house was
 only a description of the thing devised. But when par-
 olic evidence came & c. & c. introduced it appeared that I talk
 of had already a life estate in that very house - may 354
 he had more he had an estate tail in it before - and I think
 also that, & c. the devisee held the reversion. But if the 355
 devise of the ordinary construction was put upon the words would have
 no result at all in his audience. & there are when the court
 mentioned the state of the property, they said - as ever
 if the words were read that the testator intended to devise the reversion.

Deeds - another case occurred where did the real estate in
question - where the testator had, purchased some
land that he had purchased in the spirit - and
he was never a will, but he to have the ^{the same} stock
from the will. The real estate was then in the hands
of the testator. The amount of the stock was then
2,200 pounds and more than that - according to the
land acceptance - the terms of the will were not
satisfactory to the court - for the testator in his will
was an owner. After some testimony was adduced
it was found that the amount, value of the stock was only
200 - the court said the testator must have meant
to devise to the devise the proceeds or amount of stock
stock - It is declared in the last case the question
was concerning personal property - and that the devise
need not have been attested by but it was not
with regard to the introduction of parole testimony
whether the will be of real or personal property since
it is required to be in writing in both cases. It ap-
pears from a review of the last case that where the
difficulty arises from the obscurity of the sentences
they cannot be explained by parole testimony. But
where the obscurity arises from some equivocal
term used & not from the construction of the sen-
tences - the circumstances of the testator may be
shown by averments which do not impeach the will
& these averments be supported by parole testimony.

[illegible]

[illegible]

Alienation by execution of the whole of the
the interest in the land - the execution
tion - the creditor may take the land
if he offers personal property the creditor may
take it - he may not take the land
If the amount of the execution is more than
the value of the land the creditor may take
upon the land & then upon the goods & then upon
the person. But I suppose there to be an estate in the
land & have an estate in the land & have an estate
is the Debtor - this is the estate of the Debtor in the land
live upon the land & the creditor may take the land
die before the creditor takes the land - In this case
the creditor must bring an action in the court & recover
the execution & take the estate. And the creditor
is the law with an estate in the land & the creditor
I do not know any the law but that the creditor
may bring an action in the court & recover the
at the first - I mean I suppose what was the law
in the case - I am not certain of the law but I think
that the law is a good one - I am not certain of the law
in a case - I suppose there to be a case of which
the officer must go upon the land to take the land
Swift & the execution certain the law is in the law
the law is in the law & the law is in the law - I
must be the law & the law is in the law - the law is in the law
then carry it to the law & the law is in the law

Alienation by deed - Alienation by will

Who may or rather who may not alien their lands by deed is a subject more fully treated of under the title of contracts. It remains only to take a general view of the subject at this time. Every deed made by a man who is out of possession and another one is in claiming adversely is declared by statute to be absolutely void. The object of this statute is to prevent the alienation of contested titles. The statute of Henry VIII is copied into all the statutes in United States. This statute is hard to be understood but is intelligible if one can keep his breath long enough to read it. The substance of it is, that if any person is out of possession, and another person is in the form cannot sell the land. However, the man that is out of possession may for the purpose of settling disputes sell it to him who is in possession - this is the only exception to the statute. This statute however does not apply to reversions. The reversioner is not out of possession, of his estate nor does the tenant for life or for years hold adversely against him, whether ^{or not} a contingent interest was devisable or alienable. It was objected that he had no possession. It was answered that he had a right without a possession. The objection applies equally to devises of lands of which the testator was not seized in his life-time. Treason and felony by the common law after the act is committed cannot upon these principles alien their lands, for their lands are immediately forfeited to the crown. But I do not suppose any the less

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that the law of the State is not a law of the
 State - even in the case of a law of the
 State. It is the law of the State, and the
 the doctrine is well established in the law -
 that a law of the State is not a law of the
 State, but a law of the State, and the
 to note, but to observe that they are not the
 same, but they are not the same, yet there
 the intention of the law is to give them
 the same. The reason why the law is not
 made a law of the State, is that it is not
 not a law of the State, but a law of the
 State. - But the law is not a law of the
 State, but a law of the State, and the
 avoid the law. There are two laws of the
 State. One is a law of the State, and the
 other is a law of the State, and the
 the law is not a law of the State, but a
 law of the State, and the law is not a
 law of the State, but a law of the State.
 It does not follow from the
 law of the State, that the law is not
 a law of the State. They may take the
 law of the State, and the law is not a
 law of the State, but a law of the State.
 They may take the law of the State, and
 the law is not a law of the State, but a
 law of the State, and the law is not a
 law of the State, but a law of the State.
 The law is not a law of the State, but a
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 The law is not a law of the State, but a
 law of the State, and the law is not a
 law of the State, but a law of the State.

The requisites of a deed are Real & not virtual
that there should be no other & virtual consideration
2 - There must be a consideration - either valuable or good
A valuable consideration consists of money
or property or both - A good consideration
consists of Love & good will & some relation
But what is the effect of a conveyance - Rem of
A B by deed - without the consideration of mo-
ney - property or love & affection to a relation
I apprehend would not answer the question
was never made - because a valuable consid-
eration is implied in the deed - tho this does
not say more much. - Suppose A gives B a bill
of sale of his horse - & B takes the horse - no man
will dispute his right to the horse whether there
was a consideration or not. But deeds must be made
without consideration secure to the grantor 200-565
of the grantor. In the dispute between the 118.2.544
barons of York & Lancaster to secure their
estate from being forfeited by taking up arms
in favour of one party the great lords were
not into a habit of conveying away their lands
to some obscure persons not engaged in the civil
war for their own use - In a war more
and not be so strict to the crown & a great
war. During this period the manor was a
one in estate & without a manor or manor

Donation de l'Acce - it was considered & it was
 supposed that when the deed was made with
 out a more formal without any ceremony in
 the act. - The legal title passed to him and
 there was no more dispute about it than
 about the horse - but the grantor had the bene-
 ficial interest. This doctrine of uses was
 cut up at once by the Statute which called
 the Statute of Uses - Under this Stat. if a man
 granted land to another for his own use it con-
 veyed nothing - the use man takes nothing
 but the legal as well as equitable title re-
 mains in the grantor. And the same is the
 case with a deed without consideration and
 hence it is said to convey to the benefit of the
 grantor.

But the writing must be upon paper or parch-
 ment - so it is said - but if printed it is the
 same. At the beginning of our war says
 the judge when paper was scarce I knew of sev-
 eral deeds written upon white Birch bark -
 The deed must contain a precise relation
 of the premises so that the land can be ascer-
 tained. - This is done sometimes by describing
 the sides & bounds & sometimes the lines.

These deeds may have conditions annexed &
 then making the conveyance defeasible - as

mortgages. When the mortgage is not a fee simple
 in which the land is mortgaged, and the
 conditions are performed the title reverts
 in the grantor - The evidence of this is the
 mortgage deed. - This however does not op-
 erate against the principle that, parole proof
 cannot be admitted to change the operation im-
 posed. - Parole proof is here admitted to show
 whether the contingency upon which the es-
 tate was to be forfeited has happened or not.
 A deed of conveyance commonly contains a cov-
 enant of warranty. - This is a covenant on
 the part of the grantor that he is well seized
 & that he is bound to defend the premises ag-
 gainst all claim whatever. And is the same
 in substance that contained in a release.
 If the grantor dies before he is sued upon the cov-
 enant of warranty - but afterwards appears that
 he was not seized - his executor may be sued
 because the covenant was broken during the
 life of the testator. The executor may have his
 action against the warrantor or his testator - for the
 damage belongs to him. The grantee cannot
 bring his action on the covenant of warranty
 unless he is actually seized. If he is not seized
 he cannot bring his action against the warrantor
 or his testator.

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Allocation to B. The process of warranting a
deed is that a warrantor undertakes to warrant the
deed - it passes with the deed. The writ is the
warrant to B. as much as it is - & he may avoid
the writ & the warrant. & to bring his ac-
tion against B. - B. must give notice to A. or
to C. or both to come in & defend. - A. & C. ^{may} however
come in to defend - or not - B. must make out good
a defence as he can but if he fails - he may sue
with A. & C. at his election & the former judgment
will be conclusive against himself & C. or A. - and
they will have to pay all damages & costs - but
if it may be that A. & C. were notified to come in & defend
then the former judgment is not conclusive
they may make good defence which they can
against B. Notice & warrantors is commonly
given by a written instrument called Voucher
when more than one warrantor is summoned
in - it is called double voucher or treble voucher
another requisite of a deed is that it be
signed by the grantor - This however was
not so at common law - but the statute required
it. - It must be sealed and delivered -
Dating & delivering are two different things
the both derived - from the same word. The
Latin word is *tradere* to deliver. The word
tradere is what is now necessary to the deed.

if a man delivers a deed & the power properly
granted to become his deed upon the happening
of a condition - the deed is good provided the
event does not happen at all. - Where a per-
son is destitute of capacity to make a deed
but having made it & then attains capacity
& delivers the deed de novo - it is a good de-
livery - as where a feme covert makes & delivers
a deed - & then the coverture is determined & she
delivers it de novo - then gives effect to the deed
As if the feme covert having leased her land dur-
ing coverture & then the coverture is determined
she confirms the lease
But if the grantor having no capacity to make
a deed - does make one & deliver it to a third
person as an escrow - & before the second deliv-
ery his capacity is recovered & the deed is deliv-
ered - it is no good delivery - as where a deed is
delivered as an escrow it does not take
effect from the second delivery but from the
first delivery. Suppose a person is of capa-
city to make a deed - no infancy or the like
prevent him - but is impeded by some positive
law - as is the case with a clergyman - he is capa-
ble only the law by reason of his situation renders
him incapable - but when he delivers a deed as an
escrow & after the impediment is removed he gets, why

Alienation by deed - we recollect the deed - we are
 not say the judge that that is a good deed -
 the incapacity is as great as that of a minor -
 The fact is - the law supposes him always to have
 been in relation. A dispoirer may have trespass
 against the dispoirer for act done while the former
 was out of possession in fact - after having recovered
 possession against the dispoirer - but the dispoirer
 cannot have trespass against the dispoirer during
 the dispoirer - he must wait till he gets possession
 before he brings trespass. - This goes on the ground
 that the dispoirer after having regained possession
 has in contemplation of law alienated possession
 & the execution in a deed. - It is said in some
 books that there is no such thing as an execution - it
 where one accepts a house or a room in a house
 or tenement & so the title - there would, perhaps,
 be the word said if the word were not accepted
 in execution of a thing which one has a right
 of a thing in possession & so it is said for the
 whole paper without any exception - as if a man
 lease twenty acres except one - the exception is
 void. - But any judge have a right to hold the rule
 void of the rule in the construction of the execution
 the law is such that one who is a dispoirer of a
 thing but who is not in possession of it is not a dispoirer
 of a thing in possession of it - the execution is

[illegible]

And suppose the second granite. Could you, perhaps
know of the former one before the latter has
shall be how old the latter than the former
could find - shall be as well as well of a
known granite and disposition. It is noted that
the second granite is of a different color than the former
granite and of a different texture. The former granite is
but as the granite is of a different color. Suppose
a certain series of different attachments in
a form - as if the attachments were to be seen
by the same before hand - as if the same
were seen upon the same form.

If any of these requisites are wanted it is
no good thing - as if there be want of paper
writing - want of paper or parchment, or of
ink or pen or of the pen. See we that
a seal - as say the seal of a king or of a
woman say a king or of a woman. It is not
the same as a seal - as if the seal is
received as a seal of a king or of a woman
and as a seal - as if the seal is
received as a seal of a king or of a woman
by a king or of a woman - as if the seal is
received as a seal of a king or of a woman
material it is said - as if the seal is
received as a seal of a king or of a woman
point in material it is said - as if the seal is
received as a seal of a king or of a woman
where there is in the case a seal of a king or of a woman

The author of "The History of the English Language" has collected a vast amount of material from various sources, and has arranged it in a systematic manner. The work is divided into two parts: the first part contains the history of the language from its origin to the present time; the second part contains the history of the language from the present time to the future. The author has also included a chapter on the influence of foreign languages on the English language.

& the witness in the presence of the other parties, the contents of the deed being made authentic by the witnesses in the way. But with no a right to make a deed -- suppose the grantor agrees to give the land & his heirs & assigns in fee simple in the deed -- the witness make the deed -- but the witnesses & the deed -- they were not called in & were of no consequence at the time -- a deed afterwards added. In a case of this kind in this state the court recommended to the parties to be reconciled without giving a decision. In case of revocation & alteration the presumption is that the intervention was before signing -- & the deed is void. Law a seal is so essentially necessary that if it be broken off -- it destroys the deed. In North Carolina where witnesses of the parties were to be made -- but where the mice had eaten off the seal -- the deed was held to be void -- but where it was proved that the seal was eaten while the deed was in the custody of the court -- by the benignity of the law the deed was established.

Another mode in which a deed may become void or made expost facto is where the parties set together & disagree to the contract (ie agree that the deed shall be void) -- It is not necessary to reduce this writing in such case -- the matter may be shown by parol proof.

Alienation in Deed - a deed may also be conveyed
by a decree of the Court of Chancery - as if
it were obtained by bill - and there be any
fraud in the transaction - the Court will
set it aside & will rescind the contract &
order the party who obtained it to - refund & return
the money.

As to the several modes of conveyances -
The only ancient mode of conveying a fee simple
at common law was by collocation. In making a
collocation the parties with their witnesses were
to go upon the land - the Grantor was to deliver
to the Grantee a twig of hawthorn & tell him before the
witnesses that he sold this land to him - describing
the boundaries before the witnesses. This gave
the Grantee a title to the land - it created in him
a fee - & hence once word fee - from collocation.
At this time no writing was necessary. However
the witnesses got into a habit of taking notes or
memorandums of such conveyances. But by
law was omitted - but the parties went upon
the land - & here delivered a written deed to the
Grantee.

Another mode of conveyance was by exchange -
this is now gone out of use almost entirely.
In conveyance or alienation it was the custom to
make a deed.

There was some of a made - some of the other
we are called a release - & a man who is
convinced of the justice of the cause. & there
were a number of people who were - the co-
mmittee of the cause were all in the right & in
imposition - I should be the only one in possession
of a case - but on the day of the conversion
of the cause to the release of all the rights
title - this would be a release of all the rights
of the ~~the~~ ^{the} cause a right of possession. For the
and a rule of law that no person should
be more. The cause of the release is much
like the cause of the release. - The mode of the
release is a rule of law that no person should
be more. I have heard people ask them
the mode of release to one & then sit down
and write a release - what was all that for? I
did not the matter at all. I did not see
me the same instrument? He could not tell
me the price was - it was not in the matter
of the introduction of the mode of release.
on the doctrine of the - a man who is the cause
of the cause is the cause - the interest of the
cause is the cause of the cause - it
was a principle of the cause of the cause - it
was not liable to exchange - I have heard of the
end of the cause - on the cause of the cause

Alienation by Deed. It could not be effected by a mere
 payment of debt. The borrower was not obliged to
 alter. This is the doctrine of law as it stands.
 It may be useful however to discuss the
 of use for the purpose of showing the extent
 that have arisen out of them. It is now law
 says the usage of a good account of the abe-
 tance of use as in the case of a mortgage in
 mortgage. From there one may get a good
 knowledge of use. The estate being as
 borrower as in law without a mortgage, as we
 know of - mortgage - mortgage - mortgage
 not liable however to extract - or not, as in
 of debt. The mortgagee could not extract it
 deed - or he might leave it - & the mortgagee
 the aid of the use-man. It is a statute a statute
 provided that it might be extracted for the pay-
 ment of debt. Afterwards the mortgagee was
 made liable - as tenant in fee simple - and the
 the land should not extract. Afterwards came
 the Stat. of use. This vested the legal use with
 the beneficial interest in the mortgagee.
 This also introduced a secret mode of conveyance.
 The grantor could convey his land without
 deed. - He might convey it deed but he could
 in a few proceedings was necessary & a great deal of
 title. If a man wanted to convey land & was in

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he would as the law was before. Recal Property
remains to D. & S. would remain in D. to wife
but now he was bound to S. & the wife & the
wife & his wife would take the estate & no no-
tice be given to D. & the consequence. - This was
no violation of the principle that a man could
not convey immediately to the wife. The Statute
by its magic however transferred the legal estate
immediately to the wife.

it did was criminal - the crime of a man
conveyed by livery & seisin. The grantor af-
ter the Stat. of Uses would make a livery & the
land & the livery of the grantor & would make
the livery & the livery of the grantor quite ex-
tensive - all derived from the Stat. of Uses.

This Statute however was in a way evaded &
evaded in Chancery by the introduction of a estate
called a use estate. Some bodies of men sugges-
ted this plan - it makes a grant to D. for the use
of S. in trust for D. - The effect of the Stat. was to
transfer the legal estate from D. to S. but in
conscience & equity revolted against this. The law
the land - the grantor did not mean that he
should have the land. and in the Court of Chan-
cery. I shall have the beneficial estate & S. the
legal estate. - This was the effect of the Stat. of Uses
totally destroyed. The whole system of livery & seisin

[illegible]

Alienation by Deed - This is the usual mode
of conveying title in the United States. It
was the way in which the colonies of
Virginia & New York were settled. But the
people brought too many alterations &
secret conveyances - & it was at last
voted by statute that all deeds of land in
sale should be enrolled in the record of the
County - & this is the mode also in use of
the State. - This is a most perfect & reliable
mode of recording deeds. For the same reason
we have no statute requiring deeds to be
because all our deeds are void recorded.
A Deed of Release - which is a mode of convey-
ance in the most general use. The donor
would convey land - & then he would
write a deed in which he would say
the like - He then writes a release the same
which is a deed like one just mentioned.
Some don't understand it - He says he
does so - I don't know how he does it. I know
one that is the way. I know one who
deed of Virginia & New York - but then it is not
rolled & I don't want the trouble of a deed
rolled. - He gives on a deed of the same
will not need to be enrolled. For the deed is
not in custody of the State & it is not in the State.

And in the old com. Law any man Real Property
and of his own name executed a release to him
which is to him - ~~as was the case in the old~~
~~Law~~ - The Law has a right of the release the
other is in his possession - But seized for
the use of him - he is trustee for him &c.
as to fines & common recoveries - we have no such
mode of conveyance & therefore it is unnecessary
to treat of it at all - It is well however to read
that the laws of Blackstone which give an ac-
count of the old conveyances.

There remains before we come to the actions
a few things to be said of two kinds of estates
the fee simple - There is where there are
more than one owner - the other consists
of several estates & remains
where a man owns land ~~with~~ ^{out} other
persons in a estate in severalty.

At estate in severalty there are three kinds
the fee simple, the fee tail, & the life tenancy - the
second is called parsonage or vicarage - & the
third tenancy in common.

as to jointure - I shall take notice of them
as the subject as they are at com. Law - The
law has made a distinction as to joint-
tenancies made to be personal as well as real
estate - it is both as well as of a farm.

Joint Tenancy - when two or more persons
own a thing in such a manner that the
act of one of them does not destroy the
estate, but it continues in the others. It is a
device - and of the nature of a trust. It is
the principle that a joint tenant can be seized
with the same land as the other joint tenant
and that the land is not divided between them.
Another - the estate ~~is not~~ is a joint estate
and the joint tenants are not to be divided
if an estate be granted or devised to two or more
persons without any restriction or limitation
there - or rather it is to be so unless it
shows that the grantor intended to give a
share in the land - it is a joint estate. For
on pieces of real property and in the same
tenure - the estate must be the same in each
of the parties - for if one part be an individual
person, it is in fee simple, the other is divided
between the two parts of the estate. That
one part be with a remainder, the other a
life estate, and the joint estate is not
a reversion. The same must be the same
of a estate - but at the same time, the
same act of the parties. Thus, one may
an individual estate, but the other a joint estate
the same to be a joint estate, and not a joint estate

[illegible]

[illegible]

Kobarcenry. tho the term is different in
 law it is of the same nature in the
 law in common. I have seen some cases
 that are similar to this one.
 In a will all estates ^{not} in common and by
 joint devise are to be divided equally
 be tenants in common and there are
 words in the grant or devise expressing an
 intention to create a joint tenancy. This is
 different from the law in the common
 all estates in severalty are joint tenancy un-
 less there be words in the grant or devise showing
 an intention to create a tenancy in common.
 As to Kobarcenry — This is where land descends
 to several heirs — by reason of the mode of
 descent in this there can never be a case where
 where the intestate leaves a son or daughter to
 inherit of gavelkind. — If a father has a son
 and a daughter goes to the eldest son as heir in
 but where the intestate leaves no son his real
 estate goes to the daughter in Kobarcenry.
 In this case however the real estate of the
 intestate descends to all his children in com-
 mon and equal — so that they are coparceners.
 Kobarcenry must not be used for this. The
 entry & possession are equal to the heirs at
 law. There is no difference between them in the

These things are very common in real property
as in a grant of land the grantor is
to give a certain amount of land - it matters
not in length of time itself will not give
the right of the other nor give him title - but
it attempts to take his title - it turns him out
by force of his right - take the rest & profits I. H.
the & had claimed ^{as a tenant} the rest & profits - but was
indisposed to. This may be sufficient to
make the presumption of a title after a certain
period number years. as in there are need
of an actual title.

One who has a house can never have trespass as
another - nor can they all join in trespass
as one - as can one who has a house have
the action of trespass as another. The Statute did
not allow the action of trespass to be taken
by joint tenants. and the reason is because
co-tenants always had a writ of partition as
each other - even at Com. Law. But joint ten-
ants did not at Com. Law.

Co-tenants differ from a joint tenancy in that
the former can never be created by purchase but
only by descent - but the latter can not be crea-
ed otherwise than by purchase or devise.

The estate in the former may vest at different times
but in the latter it vests all at the same time.

1800
to be used in the stock of a corporation & is not
liable to be sold - The child is a person who
is - and it is then the children & child the
children are copartners.

There is no necessary indication in the
the estate is owned by the son of each son
which is owned in severalty - It is divisible
& alienable.

It may be divided by partition - as in the
most & agreed to a division - or it may be
case it is usual for the son of each son to
a joint claim - or all will still - & all will
his share. - If one copartner dies, the
it is turned into a tenancy in common. In the
moment one partner - the estate is not
be divided. The thing is a common law
tenancy in common.

as to Tenancy in common - there is no affinity
to say the estate is a common law estate & it
is a common law estate & it is a common law estate
but it is a common law estate & it is a common law estate
in common. If one of the partners dies, the
undivided moiety of the estate is not
divided into two because the other also has
a share in the estate - & the estate is not
divided because the other also has a share
therefore the estate is a common law estate.

Again suppose an estate in fee simple - Now I have
two parcels - A & B - I have the same estate in A & B
the same estate in A & B - I have the same estate in A & B
the same estate in A & B - they have not
the same quantity of interest - one holds in
fee - the other in life - & so on & so on - a man
may have the same estate in fee simple - there
are three are tenants in common. I ask if he
is a tenant & one of them tell it is - it is a
tenant in common - a method of dividing
a tract of land & a piece of land without
making the whole tract in severalty then
it is divided into severalty in common. I ask if
in common, one should be created - certainly
he would exercise a power of sale - I ask if
the grantor has the right to be kept for
sale - then the right is divided in common.
I may also be creating a power of disposition
to which you may have a power in common
certainly we do not have a power of disposition
without a power of disposition - I ask if a grantor
land to the first in time - one would divide
it at the office of the - there are no words of
division - I ask if it is a power of sale - I ask
if it is a power of sale - I ask if it is a power of sale
before the sale - I ask if it is a power of sale - I ask
if it is a power of sale - I ask if it is a power of sale

[illegible]

one tenant in common may have Real Property
and of partition against another - he may
also have an action of waste & an action of ac-
count. - There is no jus accrescendi in
tenancies in common. - But even one
joint owner may bring an action of ejectment as
the other - he can bring an action called
ejectment - he cannot turn his cotenant
out of the land - all the effect it has is to get
him and possession - It is different in its very
nature from an action of ejectment. Suppose
A & B are tenants in common of a small house
not large enough to accommodate more than
one of them & B is in possession - A brings an
action of ejectment - Can A turn B out - No
for the court in both cannot act in a de-
finite - If the house was big enough then there
would be no difficulty. It is then a case difficult
where the property is indivisible.

A tenant in common cannot in general have
treble damages as his cotenant. But there is one
case where he may have treble & that is where
there is a total destruction of the thing held in
common by one tenant. Thus if there is a house which
be knocked down - or a mill be burnt down - or
one joint owner - or the husband.
In all cases of a total destruction of the thing held in common 200

[illegible]

Remainder - But it is a matter of course, according
to art. 10

To create a remainder there must be some
good existing estate, which I do not know
4 manner. - This estate is called the particular
estate. The word remainder is a relative term
6 it implies some other, to which the estate is assigned
good or, an estate in common or a future time
8-2 without any intermediate estate, it is a remainder.
There may be also an estate of remainder
10-1 in fee - but a future interest, which is to be
10-2 be a particular estate, it is not a remainder.
10-3 estate remainder. ex-heredatary remainder is a
10-4 estate of remainder in fee - it is a remainder
10-5 since immediately in fee, it is a remainder in fee
10-6 & the remainder is that which is left over after the
10-7 is over. The object of the estate is to provide
a reversion in fee in remainder. The estate
10-8 is in advance there can be no remainder of the
10-9 precise - & if there is no remainder of the precise
there can be no remainder in fee, as remainder in fee
10-10 is not a remainder in fee, it is a remainder in fee
& common. The remainder is a remainder in fee
10-11 principle, it might create a remainder in fee, as
10-12 hence, the estate of remainder is a remainder in fee
10-13 estate of remainder. The estate of remainder is a remainder
10-14 common to both, it is a remainder in fee, it is a remainder

the remainder - to create estate in remainder
 And as there is no doubt, but that it is for
 the purpose of supplying a remainder. It
 follows that if the particular estate is void
 in its creation - then the remainder is void
 upon it can be no remainder - because in
 legal contemplation there is no, continuation
 498 estate - as if an estate be created to an individual
 & hold for years & remainder over.

415 And if a particular estate is good in its crea-
 tion is defective before the remainder comes
 the remainder must fail. I give this rule as
 the good as it ought to be given & not as Black-
 stone says it does. For according to Blackstone
 if the particular be defeated at a time when
 the remainder may vest - yet the remainder
 shall fail. Thus he grants land for 10 years
 with remainder to B after the expiration of 10 years
 If now the term for years is forfeited at the expi-
 ration of five years - the remainder will be void
 the remainder could not take effect in possession
 till after 10 years - But suppose an estate be gra-
 ted to A for 10 years & after the determination
 of it the estate remain to B in fee - Here accord-
 ing to Blackstone's definition if the particular
 estate is defeated in five years it is void & the
 remainder fails - it is no matter when the partic-

particular estate determined. *Practical Proportion*
The remainder vest in possession the the
intermediate estate is dedicated within 5 years. 1840
I am entitled to a share of the remainder. 1840-1845
and a share of the interest in the remainder of the wood.
1840-1845, man - the remainder vest in 12. 1846-1847
but one grant is made to the remainder. Some
in the the death of the grantor - here 1840-1844
the estate is forfeited before it is made - the re- 241-261
remainder rule.

The second general rule is that the remainder
must commence in possession at the grantor or
the death of the creator of the particular es-
tate. For the purpose that the absolute owner
the right of the remainder man should be
created at the time of the creation of the par-
ticular estate. as where one grants to a son for
years and then to the remainder - the remainder commences
at the same time with the term years. 1840
it is a rule of law that the remainder made by the grantor
at the same time as the remainder man. 1840
but there may be a grant to a son for years and then to the remainder
at a later time. 1840-1845
the remainder does not depend on the death of the grantor
at the time of the creation of the remainder. 1840-1845
the remainder does not depend on the death of the grantor
at the time of the creation of the remainder. 1840-1845
the remainder does not depend on the death of the grantor
at the time of the creation of the remainder. 1840-1845

Remainder - but not of a contingent remainder.
 I however cannot recall a case of a con-
 tingent remainder - it is inconsistent with the
 nature of a future enjoyment. I must, perhaps, refer
 255 the grantor. But that the interest does not
 256-67 pass at the time of the grant is well settled
 266-7, and in case the contingency does not happen
 268, it will go to the heirs of the grantor until it does
 269 happen - Now there would be no objection to vesting
 the interest, before the time of the grant, in the
 time of the grant.

~~It is a rule that a remainder cannot be~~
 limited upon an estate at large in case - but it is
 not meant that a man cannot discontinue an estate
 after an estate in fee - but that it cannot not be
 a remainder. It would be a reversion - The same
 term time called a remainder. It is a settled rule that
 228 the remainder, particular estate, must be cre-
 ated at the same time, & by the same instrument
 229 & the remainder must vest in the grantee during
 the continuance of the particular estate or
 co-incident in which it is determined - The mean-
 ing is that it vests in interest co-incident with
 the grantee - The rule is somewhat laid down
 so generally in the books that we often find it
 difficult - We don't know whether it vests in
 interest - or in title - or in possession.

38
This is an estate in remainder - The life estate is
life remainder - The remainder is in interest
in interest with the creation of the life estate -
is absent & are that such a remainder rests in
possession of it creation - or during the continuance
ance of the life estate. So if a grant be to A for
life remainder to B provided he return from
over sea within 5 years - the remainder must
rest during the continuance of the life estate. At
the moment he returns, remainder is in B.
If a grant be to A for life, and remainder to B
remainder to the survivor - the remainder rests
constantly at the determination of the life of one
who is cannot be told in whom it rests at the creation.
It follows that if a remainder does not rest in
interest during the continuance of the life estate - or particular estate - or co-estate in which it
it determines the remainder must fail. If there be
a grant be made to A for life remainder to the first son
unborn son of B - or dies before the son is born & the
here the remainder does not rest - the must
both be in the fee simple. If a remainder be limited
to one - two days after the death of the grantor, 1387
and tenant for life - the remainder is void from
creation.

These three are the cardinal rules in respect to re-
mainders in general. But remainders are of two kinds.

[illegible]

[illegible]

remainder - a remainder term is not
 to be a particular name & is not a condition
 17 Here are two contingencies - one is a
 2 like one is a condition the other. It there be a per-
 51 son born in one contingency & - & if a son born
 his name be it in another contingency. A
 52 remainder limited to one when the condition is
 155-6 of something which is said - the probability
 156. it is said in the remainder there is a legal pre-
 170 sumption that such an one. I will say that, then
 170. E. Therefore a remainder it as a legal illegiti-
 170 mate child is said.
 171. A contingent remainder of a record cannot
 171 be limited on any estate in a freehold -
 171 like The rule is that a record may never be in a free-
 172 hold - there must be a record in a freehold remainder
 172. - that there may be a record & the record. &
 173. I will say that.
 173. A contingent remainder may be created in
 173 the determination of the particular estate be-
 173 fore the contingency happens - The remainder may
 174 vest during the continuance of the particular
 174 estate or it may vest upon its determination.
 174. But a contingent remainder cannot ~~vest~~ ^{vest}
 174 till the contingency happens - This is an estate in
 237-4 a contingent remainder to the unborn son of B
 237. & if he dies before the contingency happens
 237. & if he dies before the contingency happens

But the determination of the mere legal interest
actual or not of the beneficiary is not the thing
with a course of action. The court will remain con-
sistent. For the legal interest is sufficient. The legal
interest is sufficient - it is sufficient. The legal
interest in certain situations of law is the legal
interest - the desired

To secure contingent remainders from being lost
on account of the particular estate being defeated
it has become a practice in England to provide that
the remainder should be contingent on the death of the
life tenant. This has been done in many cases. The first
case was in 1793. Thus if an estate be granted to A. for
life with remainder to B. during life of A. - remainder
contingent on the death of A. - this is a vested remainder.
- See many indefinite number of cases at 25-134
trusts. - Here again I would recom-
mend the practice of contingent remainders.
This is now almost the object of the
practice ever written on and to be followed in 1802.
The question whether a remainder is vested or
contingent depends not on the probability of the
event of the remainders taking effect in
possession - but upon the nature of the limitation
the uncertainty whether the remainder will vest
in interest. As an example of a vested remainder
to B. - it is a vested remainder - not it is not

Remainders - were possible that the remainder
 140 would ever be lost. But this is a universal
 141 criterion - whether there is a constant capacity
 142 of the remainder to be kept in a position in
 143 the holocaust should now receive recognition in the
 144 manner provided for the same. Thus it is an
 145 late be granted to the remainder. But it is
 146 not in the same way as in the case of the
 147 remainder because it is not the
 148 return to the criterion. The remainder is
 149 a remainder in the same way as in the case of the
 150 remainder. But it is not the same as in the case of the
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 200 remainder. But it is not the same as in the case of the

As the crop remains, raised Real Property
in the land, it is a good one, and it is not
the disposition of the land, but the land itself, 1841
therefore without any other title. Here the 70
implication is that if they have been in the land, and
it is an estate, it is in remainder. Again 200
it is said that in some of the old books that a do-
cument may be created by deed, 20-400
It is a true rule indeed that a crop remains, and
it is not raised, it is in the land, in a deed, 25
it is not raised, however, it is not, it is here the 1841
in the land, it is not, it is not, it is not, it is not, 232
of a deed, it is not, it is not, it is not, it is not, 232
raised, it is not, it is not, it is not, it is not, 232
It seems like the prevailing opinion in the most
cases, and it is not, it is not, it is not, it is not, 232
it is not, it is not, it is not, it is not, 232
the immediate time of the deed, it is not, it is not, 232
it is not, it is not, it is not, it is not, 232
This however, suggests a doubt in the question, 232
that I never desired to make a deed in this man-
ner - the same rule applied, it is not, it is not, 232
or the deed - it is not, it is not, it is not, it is not, 232
the estate, it is not, it is not, it is not, it is not, 232
that the grantor may, it is not, it is not, it is not, it is not, 232
let him take back a lease for life, or years, or the same, 232

Executory devise - The law as to what is an
 estate in reversion called the reversion
 The other kind of reversion is called
 the executory devise - there are two kinds of
 executory devises - one is a devise in fee
 simple with a remainder - the other is a
 devise in fee simple with a remainder in
 fee simple. An executory devise is a devise
 which is a devise of a future interest - not
 a devise of a present interest. The devise
 given in some future contingency "This is very true says
 Mr Gould but it is not strictly a definition of an execu-
 tory devise for the same may be said of a remainder
 created by devise Blackstone does not take the specific dif-
 ference between an executory devise and a contingent
 remainder. A better definition is a tract include
 no other species of estate in fee - is such a limi-
 tation of a future interest as will or devise
 as will take effect & be admitted in a future interest
 but not in a present interest. This is a
 definition which is more precise than the definition
 is not of course an execution. There is it may
 be such a limitation, it would be a good remainder
 see in a deed - it is not an executory devise but
 a contingent remainder. Executory devises
 are allowed out of more indulgence than remain-
 ders. The indulgence is more indulgent to the
 will of the testator. The indulgence is more indulgent to
 the construction of the devise - in the case of a

which are considered much without local properties
known - after in fact it is extremely - in the same
it is viewed unambiguously as a whole & terms 100
the right nature of construction - 1000
The doctrine of execution is now well settled
it is unknown to the law as far as concerns the
reign of Hen. VIII - nor were they in the reign
of Hen. VIII & Elizabeth - and the modern
ideas are much more liberal upon execu-
tions than were entertained for a
long while after her reign.

Executions differ from remainders
in three ways - 1st the donor has a right to
the whole term he has no particular regard to
what it supports it - but it is a term with a term
of years or 2^d the executor does not have a
life estate in any other vested estate man with
a life estate he is limited upon a term
another is simple - but a remainder can have
no estate in it. 3^d a remainder is a vested
interest may be limited after a life estate in it
it will estate to use of execution which may
be a term or a term for years or term for life
and may be limited to one or more persons
it may term to a term or years or term for life
or years or 2^d - the advantage is made in favor of

[illegible]

[illegible]

Occasional accidents - but now men are so much
 more intelligent & more capable of self-protection
 that there is an essential difference between
 the nature of the accident as it is now & as it
 was formerly - as before the war - as
 the man who was injured in the war - he
 is a different man - he is a different
 man - an executive officer is not a private
 interest - it is altogether different from any
 other part of the state - it is a part without
 a mother and a father in. The man who is
 vice to the nation and so who is, we would
 say, the leader of the nation in peace - there are
 still then the same men who are in the war
 in the peace - suppose he is a fine one
 in the war - what of all the time the limitation was
 set to the law - now a remainder in a reversion
 since the estate of the war is necessary as a part of
 the same estate - it is not so - since it is
 not a reversion - the right of the nation on
 the land side is not in the hands.
 And as an executive officer cannot be
 barred by law or recovery a rule is necessary
 to the nation of fixing the period of the action
 for the contingent case it must be fixed - otherwise
 it is not possible to fix it - then we have
 28th which is a rule - we have then a rule to

60
created in the & removed. What is said, on the other
hand, is, particularly in that the estate is un-
alienable - it is impossible to alien an ex- 220
isting estate before the contingency happens & it is
impossible to take the inheritance. 230
Execution device: therefore to be good in these cases
creation must be limited to take effect within 228
a life or lives in being & 21 years & a fraction & M.C.
or a year. Thus a devise may be made to the 179.
unborn son of A when he attains the age of 21 years
& 21 years - & this will be good if the child be 230
posthumous. Fern 314-320-356- J. & H. 595-100 - 2
It makes no difference how many lives in the term
are after which 21 years & the estate is to com- 200-34
mence. - The estate may not commence till 320-356
all the lives are dropped. Thus a devise may 1 Will
be made to the unborn son of A if he has a son 207
but not to the unborn son of B if he has a son & M.C.
thru the whole alphabet - & the unborn son of A 74
when he attains 21. - But a devise to the unborn
son of an unborn son is void. According to
the terms of the limitation the contingency
may be postponed to a more remote
period than is described in the limitation
it is void in its creation. Therefore either
law is clear in a case that all remainder over of
a limited estate after a life estate must be in one devise.

15
This is a ~~simple~~ ^{simple} ~~tail~~ ^{tail} ~~to~~ ^{to} ~~imply~~ ^{imply} ~~Real~~ ^{Real} ~~property~~ ^{property}
either to or ~~it~~ ^{it} ~~is~~ ^{is} ~~an~~ ^{an} ~~time~~ ^{time} ~~within~~ ^{within} ~~the~~ ^{the} ~~time~~ ^{time} ~~Term~~ ^{Term}
~~allowed~~ ^{allowed} ~~to~~ ^{to} ~~the~~ ^{the} ~~Term~~ ^{Term} ~~become~~ ^{become} ~~it~~ ^{it} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~Term~~ ^{Term} ~~85~~ ⁸⁵
the remainder, ~~vests~~ ^{vests} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~Term~~ ^{Term} ~~852~~ ⁸⁵² ~~and~~ ^{and} ~~the~~ ^{the} ~~Term~~ ^{Term} ~~852~~ ⁸⁵²
this rule holds as well to three different kinds of time
of execution devices. Term 322-341 - ~~Term~~ ^{Term} ~~852~~ ⁸⁵² ~~and~~ ^{and} ~~the~~ ^{the} ~~Term~~ ^{Term} ~~852~~ ⁸⁵² } 887
These attempts to limit a fee upon a fee in void Term
because of the distance or remote ~~of~~ ^{of} ~~the~~ ^{the} ~~Term~~ ^{Term} ~~852~~ ⁸⁵²
contingency - but in the case of remainder the
contingency of the contingency is of no conse- 852
quence - the remainder is not unalienable. 1456
If a devise be to a person & if he die without issue
heirs of his body - or without issue then to B - B 234
being by implication an estate to A & the heirs of 721
his body - it is not an estate to B by way of ex- 276
ecutory devise but by way of remainder. But Term
if there are other words restraining the event to 852
a particular period - as to the death of the first dev- 261
isee - it is good as an executory devise. Thus a de- 225
vice to A & his heirs & if he die without issue in the 1111
life time of B - then to B & his heirs - this is good 207
as an executory devise - so a devise to one & 821
if he die without issue to his heirs, ^{Tungate} has been 146
held to be good as an executory devise. 721. 322 - ~~Term~~ ^{Term} ~~852~~ ⁸⁵²
In common our reported errors have said that a de-
vice must be certified according to the common
ordinary acc. ~~the~~ ^{the} ~~of~~ ^{of} ~~the~~ ^{the} ~~terms~~ ^{terms} ~~used~~ ^{used} ~~and~~ ^{and}

and the estate is to be divided - and the limitation
then placed on it - the last limitation is not to be
stricken out of the last limitation. 159-45-46-48-163

The ultimate limitation however would never take effect - if the preceding limitation was 251
and the remoteness of the contingent estate 251
Thus if one dies and his children without heirs 251
to be - we may say when a certain contingency has
occurred without heirs - it cannot take the limitation
then because of the remoteness of the contingency from
the time it occurs can take it. 251-8

If a subsequent limitation is made as to 251-251
and a prior one of the prior one cannot take effect - neither can the subsequent one.
Thus suppose a person be to hold for life - remainder
to the children or to - if it is to be given of him
it is void as to the limitation 251-1000

General rules as to Excessiveness - as stated 18-110
some rules are according to the law of trans - some
are not. And according to the law 286-20
can authorize the same rule is settled as to 439
contingent remainders except that they are not
a signate & here it is to be observed that they are
signate in equity before the contingency happens - M. Bl.
son or before it is in equity. It is to be observed - so
remainders may be said to be clothed with a possibility - 251-88-03
The intention of the parties may be a very strong inducement.

Executioner's notice - at executioner's remainder and
 184-6. For a person and not to transfer to 220-605 while it is a contingent remainder. - In the matter
 240-1 is that no man can convey an estate. - In 187-212 an actual or potential interest in land. But
 188-189. the an executioner's contingent remainder can

152 not be transferred by deed - as also - as a person
 they consist of a freehold - then must be in fee
 160-161. an estate - by way of which it is - or the executioner's.

212 (i.e.) the contingent remainder may be transferred
 238 by line derived by the particular tenant - but
 187-188 as in an executioner's notice the estate must be

593 a part of the line it denotes a certain limit
 188-189 way of establishment. an executioner's notice however

411 may be released even as to the remainder of the
 188-189. land - the rule is that a person may convey

152 an estate in fee simple - as to the estate in fee simple
 240-1 as a person or a person's right - as a person's

218-219. person. But it is laid down in 188-189 that a person's

that a person's estate may be conveyed by deed in fee
 188-189. person's estate in fee simple as a person's

409 of an executioner's notice. contingent remainder
 188-189 regard the deed as a notice of agreement to convey

440-2 even after the death of the person. - as a person's
 188-189. person's agreement - as a person's agreement. They

188-189. do not convey it as a grant. but only as an agree-
 ment to convey.

The first limitation is an express, & the
 center device - those that follow it will ne-
 cessarily be so. It is not so however where the
 first limitation is a contingent remainder
 for there - a subsequent limitation may be a res-
 tained remainder, & it is laid down in the books
 as a general rule that if the first estate vests in fee. Does
 remain - the rest that follows vests in interest & it
 becomes a vested remainder. But some will say I fear
 I cannot believe this is true when the subse- 366
 quent limitation is a life estate or a term of years
 or a term of years - I suppose a device to be a re-
 mainder & the unborn son of B at 21. As an
 exception device to the eldest unborn son. And
 this vests in possession after the child is born -
 Further - suppose a device to be to the eldest unborn
 son of B when 21. Here it does not vest in interest
 in fee. Thus, in as to Executory devices - The
 second species of Expectancies are - Reversions -
 A Reversion is a residuum of an estate left in
 the grantor & to commence in possession after
 the determination of some particular estate 367
 granted to him. Thus if I grant in fee simple 375
 lease to another in term of years - it is called
 a reversion in fee. Or if he makes a lease for life 376
 he does not part with all his interest but all the
 rest belongs to him. So if I grant in fee simple -

[illegible]

there can be no attornment. Real property
as a reversion is created by a grant in fee simple
if a man conveys to another an estate tail in fee
for life - remainder to himself in fee - then a reversion
is perfectly negated - for he had the reversion.
If a man grants to another in fee simple
reversion to himself - this does not take effect
as a reversion but as a remainder - tho the word
reversion is used.

as rent is incident to the reversion it follows
that by a grant of a reversion a tenant holds the land
rent of such a lord will pass with the reversion.
Thus if one grants an estate in fee - to another for years
& after 5 years he has granted the reversion to himself
the rent will for the remainder 5 years pass to him.

Rent however is not inseparable incident to the
reversion - for by special provision to the contrary a tenant
may pass without the reversion - or the reversion without the rent.
The reversion & rent will not pass by a general grant of the rent.
The incident follows the principal by a general
grant - but the principal will not follow the in-
cident without special provision. It is a rule of law
that where one makes a lease - he cannot
not grant the reversion till the lease has ex-
pired. This may be waived by the deed.
Incident of attornment. The lord cannot alienate

Reversion - the reversion without the consent or
 leave of the tenant. And the tenant could not
 46th alien to the grantee while he had some life
 47th hope. But the doctrine of attornment is
 48th now obsolete - the tenant is not obliged to attorn.
 49th A reversion may pass by any words of description
 50th 72-288 as land - interest - estate, 10 loc. 107 - plowd. 485
 51th A reversion can only be created by deed & attorne-
 52th ment - or by fine. ^{or conveyance} Nothing of this is necessary
 53th But a reversion of a term for years may be conveyed
 54th by deed - and note of conveyance
 55th or in writing is sufficient. - It is a chattel unless
 56th a devise of a reversion is always good without
 57th attornment. - It is a devise of an estate good with-
 58th out terms of years. A reversionary interest may
 59th be granted entire or it may be divided or sub-
 60th divided. In any particular estate may as well
 61th be granted out of it then as over. - It will leave the
 62th ultimate reversion in the grantor. It is a lease
 63th for 10 years to B - the reversion is in A - he may
 64th then lease to C for 20 years from the deter-
 65th mination of B's estate. A reversion expectant
 66th upon the determination of a lease tail - the law
 67th holds for the most purposes regards one & the same as
 68th at least - a little value - & the reason is because
 69th the entailment may be broken by any tenant in
 70th tail so as to vest in himself the fee simple.

Since the heirs - a reversion. Real property
which an estate can never be subjected to the
and creditors of his creditors upon the ground of
his having a reversion after a fee tail. He may
therefore plead non est.

It is a general rule that where a greater & less
estate are united in the same person without
any intervening estate the lesser estate is an-
nihilated or is merged in the greater estate
as if a man leave to his son & his a place a term 2 years
or 1000 years - & afterwards dies intestate leav- 178
ing his estate to descend to the son & his. This pro-
duct of the reversion absorbs the lesser estate 302
- it amounts to a virtual surrender of the former
And to produce this effect the merger - the
two estates must meet and be in the same right.
For if the holder one estate in the one right & the
other in the right of an executor it is no
merger - as if a grant to A for a term 10 years
& the reversion in fee to B who upon the death 178
of A is appointed his executor & administrator.
The law will be no merger here. For if one is in fee
and the other in reversion - & has the reversion in right
of an executor or administrator it is no merger.
For if it is a fee tail & the reversion in fee
should meet in the same person & in the same
right it would be no merger. Bro. & C. 178 71

trespass - It is not to the owner of the land
three times. Trespass - Interdict

Interdict is a writ which is given to the
possession of the land. It is a writ which
is given to the owner of the land to prevent
him from doing any act which would
be a trespass upon the land of another. It is a writ
which is given to the owner of the land to prevent
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the land to prevent him from doing any act
which would be a trespass upon the land of
another.

and if in such case the creditor Real property
was not then not entered - still he has a right to
enter. The law is said to imply a right of entry,
but it is to be observed that his right arises from
a fair construction of the agreement. - The cred-
itor cannot retract - it grows out of the contract
of the parties rather than the mere operation of law. 3 Bl. C.
So at a distress - a man having a rent charge 212
with right of making distress - has also a right of distrain 8 Gloke
So also a reversioner has a right of entry & see - inspect & discover whether waste has been committed. 446
He has an interest in the waste. He has an interest in the waste. 380
knowing this fact & a right of knowing of course
to know and man a right to enter a common Inn.
He who establishes an Inn is supposed to do it on
this ground. So if a man is said to cut the trees
he has a right to enter to take away the trees. 10 Gloke
So if a man cuts down the trees of another
for the purpose of destroying a dangerous beast
as wolves, bears &c. &c. This is not in the law & he has
no right to enter. But it is a public
convenience & he has a right to enter. 62
The authorities upon this point however are not
all agreed. But it is agreed that the one enters
for the purpose of destroying a dangerous beast he has
a right to enter upon the land. But this right of
entry does not extend to killing a beast or committing a nuisance.

Trespass - is to be the same as a trespass
 10 in the case of the trespasser - but not in the
 20 case of the owner of the land. It is a trespass
 30 to the land if it is a trespass upon the land itself
 40 or if it is a trespass upon the land itself
 50 the principle upon which it is a trespass - in strict
 60 trespass of law it cannot be so. - The case is not
 70 told upon the ground that he has acquired a
 80 title kind of title to the land in the land itself
 90 in the case of the owner of the land which is not
 100 much of an acquisition. It has been supposed by
 110 able lawyers - that the law has a right to enter
 120 the land of another & to take it out of the
 130 land if it is laid down by the law itself. It is a
 140 mistake to suppose that the law is a right to enter
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 1000 land if it is laid down by the law itself. It is a

there is no case in which the law is applied to
 the person who committed a trespass, and the
 subject ~~did~~ ^{entered} with an original intent to do so.
 The case in 1846 is a case in which the law
 was applied to the person who committed a trespass
 and the subject - it is called the case of the
 traveller who enters a common inn, and
 who in the house commits a trespass. Here the law
 is applied in trespass to a public entry. So if a
 landlord after a trespass, with the tenant's consent,
 and the tenant has not entered, & a trespass
 is committed, or he has even a right to trespass, it is
 taken to him in the law. And if in trespass, it
 is common, even to the person so entering, he is
 liable for the trespass, & the law is applied to
 make a moral assignment of the whole
 fact. Then there is no chance or neglect can
 ever make one a trespasser, or liable for
 a trespass, in case of independent of the creation
 of the licence given to the law, and
 say all go to the law, & the law is applied to
 that the fault is wrong that will make one a
 trespasser, or liable for a trespass, & the law
 is applied to the licence of the law, must be
 such as could originally have been a trespass, &
 nothing more or a mis-assignment will make one
 a trespasser, or liable for a trespass. Hence if a
 traveller enters a common inn, & having eaten, refuses to pay for it

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that the act was done in a malicious spirit, and not
with a view to the benefit of the land. The rule
as above stated applies in cases where
the act is malicious or is done with a view to
the act is done in a malicious spirit - otherwise the
defendant is not liable. After the dog
had chased the cattle out of the lot - he had
a right to chase them off from his own land.
If he permits him to do so then it is not a
malicious trespass or an intentional trespass.
In another case where the dog chased the cattle
off the land with his own hand the dog was
chased away from the land - The court said
in a malicious trespass, and that it is the
act of the dog which is the basis of the
act it was the act of the dog not the act of the
defendant had shot at a mark the ball had missed
the mark the act was not malicious but the
act was malicious. This is the only point of 13-90
where in which the act is malicious and the
law. I have observed that in some cases
the signs of a malicious act in the mark
of the act or the act of intention act
the same rule applies in cases where the
act is done in a malicious spirit or with a
view to the act of trespass the act is
malicious or malicious but if the act is not

Exemplar of negligence - the action is not a public
in case only. Here the distinction between a
negligence action & a negligence action is lost.

Exemplar The action - the law is not a public
the - is local - because the subject is local. Here
§46 this action will not lie, as it is not a public
§47 and in a foreign country. The injury is
§48 the subject is local & of course the remedy
is local. - But if a tort is committed
in a foreign country - remedy may be had in the
action.

Exemplar The action of Exemplar is an action in
tort & the action is called Exemplar. Exemplar
§49 Exemplar is an action in tort. The action
§50 of Exemplar is called Exemplar in tort. Exemplar
the law is not a public, as it is not a public
action is an action in tort. Exemplar is an action
the general nature of Exemplar is not a public
incident.

Exemplar Who can maintain this action - The action is
§51 is the action in tort. Exemplar is an action in
§52 is the action in tort. Exemplar is an action in
§53 is the action in tort. Exemplar is an action in
§54 is the action in tort. Exemplar is an action in
§55 is the action in tort. Exemplar is an action in
§56 is the action in tort. Exemplar is an action in
§57 is the action in tort. Exemplar is an action in
§58 is the action in tort. Exemplar is an action in
§59 is the action in tort. Exemplar is an action in
§60 is the action in tort. Exemplar is an action in

[illegible]

Real Property

In the vision of common law the entire... I said it and in some cases suggest that a tenant at will cannot maintain an action of trespass against a person who enters under a pretence of right - or so it is said in rights - It seems to me that the rule is clearly incorrect & not law. It is said that the lessee cannot have trespass against a stranger if the act complained of is an injury to the land itself and the reason is because the possession of the land is in the lessor. The lessee at will is in possession rather as a tenant so far as he occupies the land. He is not in possession by virtue of any special right as to the land - but only as to the improvements. If lessor for years reserves the trees he may enter & cut & take away them and he may have trespass to quare clavi. one trespass against any one who cuts them or injures them because he with them reserves the land on which they stand. If lessor at will, ^{cut down trees he} commits a trespass by a man - & the lessee may have trespass against a stranger who takes them - for the act of cutting the trees is a trespass in itself as a stranger & all he does is to remove the trees. An act of negligence does not determine trespass the lessee at will & therefore neither are trespass & the lessee. It also a man entitled to the surface of the land may have trespass for an injury done to it. (p. 281)

Freshb. as it is called, grows in the
 Dye cut it. And the common belief is
 485 the population of the 12 - 13th century
 & still necessary at the time the image is done and
 550 not at the time the action is done.

blow. as if trespass were committed & also the
281 will to murder - he was a the most of the
a whole community action. And the owner of the road
560 of the highway may have been liable for allowing
the on line to it while it remains a highway. The
1002 highway is said to be a road - it is not a road
1400 more - no, perhaps he has - it is an act of
1443 location & not a site location. L. v. D.

428-1848-1850. It is now decided that
 the action shall be in the nature of a joint
 action for the recovery of the damages done to the
 crops. In the old case it was held that the
 owner of the land must bring the action & the
 tenant shall be alone. This is agreed that the tenant shall
 bring the action for the injury to the crops & the
 owner shall be alone in an action of trespass & shall be
 jointly liable for the damages done to the crops. It is laid down
 in Buller's case that the tenant shall be alone in an action
 for the injury to the crops & that the owner shall be alone in an action
 for the injury to the land. According to the modern

182. Sheep - but also for those of his cattle. If the cat-
 183. tle alone stray away & a writing of the owner
 184. then to go into another pasture in which land
 185. another is to have in trespass. There is a
 186. distinction however between cattle & other ani-
 187. mals. The owner of cattle is liable of course for
 188. trespass if they break into another's pasture
 189. where the fence is sufficient. But as to the owner of sheep
 190. & other domestic animals it is otherwise. For
 191. injuries done by sheep are to be redressed by action
 192. on the case & the trespasser is not to be liable for
 193. trespass where the sheep are in a common pasture
 194. cattle in entering a man's land. I have here
 195. a whole been able to see the sound & clear the man's
 196. the distinction. But if a cattle stray into
 197. a man's land a sufficient fence of the owner's land
 198. trespass will not lie in his fault. When a
 199. cattle enter the land of one - there being a sufficient fence
 200. he may distrain them & he is to be indemnified
 201. till satisfaction is made in the damages. He may
 202. bring his action of trespass & recover as the owner
 203. at his election. But he can not do either. For
 204. then he is again liable for the trespass. I have
 205-6. he may be considered as the owner of the cattle
 206. Indeed according to some authorities the action
 207-8. is not to be brought in the trespass but in the case
 209-10. it may be brought in the trespass & the case

landowner is not to be held liable if a tree or branch
would be over the river. The owner is liable if he
takes another's property. And if the cattle are
killed by the actual fault of the owner - the owner
ought to suffer. If a man's cattle are injured by
another's, he may have trespass or replevin but
he cannot have both. - A man is not liable in
trespass for any injury done thro. the instrumentality
of his land to the land of another - as if trees
standing upon one land blow down upon the land
of another & do accidental injury. A man enters
upon his land & takes them away without being liable
in trespass - this is an inevitable accident and
the rule is that he upon whom the inevitable ac-
cident happens to fall must bear the loss. - If
it is blowing trees & fell them upon another's land
the landowner is not liable unless he is negligent.
If a man goes there & takes them away in mistake
he is liable for trespass. If a man goes there & takes
them away by mistake - some courts hold him
not liable. But if he can avoid it, he is liable. If
a man goes there & takes them away & the trees
are blown down by a river & fall upon the
land of another the owner of such timber is liable
if injury is occasioned. Not liable however if
the trees are blown down in trespassing upon the land of
another.

185
Middle course a right of way. See *Read v. Proprietors*
his own land & the land adjacent. It was once held that
clear that the owner of one of the lands of an
other adjoining a navigable river for the purpose of
those of his boat was no trespass - *110*
however is now denied & is held - *1 Burr. 26-202*
It is well established that it is a public highway
becomes impassable the traveller may go by the
the adjoining land for the purpose of passing
but it will not answer to go on the adjoining land
because merely because it is more convenient. *716*
1 Show. 48 - *2 Pol. & M. 26* - *8 T. R. 268* - But that
rule does not hold as to private ways. The public
is not interested in private ways. It is the
grantor who is bound to keep his private
way in repair. But it is not the duty of the
traveller to keep the public highway in repair.
This belongs to the owners of the highway &
person cannot maintain an action for any
injury done to the road arising in consequence of a hole
in the road he has a bare right of ^{common} ~~passage~~ - *452*
of common is a right of passage. The property
of the road is not his - the possession is not his - *167*
the land is not his - nor the road his - it is a
corporate establishment. *501*
The entry of one into another's house without
authority or permission is trespass even if the door is open.

Trespass - If the owner of a house or land
208 & holden and every such person who is or shall be
208 & force. But if one has taken or taken
246 the goods of another & carried them into a third
246 persons house - the owner of the goods may with
246 & holden out the express permission enter such house peace-
246 fully & take them away - but he will not be
246 justified in breaking doors - nor entering against
182 the express command of the owner of the house.
246 Any person who enters the house of another to
246 suppress a riot affray or other disorder therein &
189 the peace - but the law allows so also a
246 man who may go to a house as another house
246 he may enter it & catch the thief. But as to
246 the law as to a man who enters a house to enter
252 peacefully - since for the last few years a crim-
252 inal process - a writ of Habeas Corpus is often
252 provided the owner of the house is not to be disturbed
252 & the owner of the house is not to be disturbed
252 otherwise it is the law. But the law is not
252 in the present state of the law as to the
252 purpose of a writ of Habeas Corpus - but the
252 House of Commons has passed a bill to the effect
252 The ancient law which gave the owner of a house
252 a right to the goods of the owner of the house
252 is now abolished & the law is now that the owner
252 of a house may enter the house of another to enter
252 the house of another to enter the house of another

1. The first of these is the fact that the
 2. the second is the fact that the
 3. the third is the fact that the
 4. the fourth is the fact that the
 5. the fifth is the fact that the
 6. the sixth is the fact that the
 7. the seventh is the fact that the
 8. the eighth is the fact that the
 9. the ninth is the fact that the
 10. the tenth is the fact that the

[illegible]

85 Except within the same year, the first of the
 long light is never seen again, but a second
 time it may be seen, and the same thing
 occurs in the same year, but the same

an agent to the same in regard to the property
of the State. And as the State has a right to
remove the same from the same - And it is not
out of the State & carry them away from - is
directed - the removal is a crime.
But if one takes another land except the State
trees & the State cuts them - here trees 57^a
more common, rejected for cutting as well as
as carrying them away. - This action lies 860
in favor of the State as the State at will can
in cutting trees on the premises where the
there are are except exception or not. 100
But this action will not in such case lie as 57^a
is a right of tolerance until the State has
a tree because the act of cutting trees does
not determine ownership. The State
shall not be determined until the State does
some act of ownership. - Lesser in years ex-
cept the tree cannot maintain this action 100
as the State has injuries done to the tree by
the State. If the State would guard against
injuries he must make special provision
for the same in his case. 100
This action lies as in the case of the State
of the State in a broken intention on the part of the
State to support the action. 100
Every person who is a State in his case 100

1. The first point is the nature of the disease. It is a
 2. disease of the lungs, and is characterized by
 3. the presence of a large amount of fluid in the
 4. pleural cavity. This fluid is usually of a
 5. serous nature, and is found in the space
 6. between the two layers of the pleura. It is
 7. found in the space between the two layers of the
 8. pleura, and is found in the space between the
 9. two layers of the pleura. It is found in the
 10. space between the two layers of the pleura.

[illegible]

[illegible]

[illegible]

It is also necessary to state the Real Property
value of the thing - for the taking or injury of it will
which the action is brought. This rule applies so
much to cases where property is injured - of man ^{estimate the}
cannot value of his right arm - but he can
estimate the value of an arm as herbage or trees &c.
but he is not bound to state the value precisely
in trials - as where cattle eat & it is held by
that in such case it is not necessary to state
the quantity - then valuing grass & herbage &c.
besides what they eat. The condition is at least
satisfied by verdict. Read. 188-19-12th 10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-1225-1226-1227-1228-1229-1230-1231-1232-1233-1234-1235-1236-1237-1238-1239-1240-1241-1242-1243-1244-1245-1246-1247-1248-1249-1250-1251-1252-1253-1254-1255-1256-1257-1258-1259-1260-1261-1262-1263-1264-1265-1266-1267-1268-1269-1270-1271-1272-1273-1274-1275-1276-1277-1278-1279-1280-1281-1282-1283-1284-1285-1286-1287-1288-1289-1290-1291-1292-1293-1294-1295-1296-1297-1298-1299-1300-1301-1302-1303-1304-1305-1306-1307-1308-1309-1310-1311-1312-1313-1314-1315-1316-1317-1318-1319-1320-1321-1322-1323-1324-1325-1326-1327-1328-1329-1330-1331-1332-1333-1334-1335-1336-1337-1338-1339-1340-1341-1342-1343-1344-1345-1346-1347-1348-1349-1350-1351-1352-1353-1354-1355-1356-1357-1358-1359-1360-1361-1362-1363-1364-1365-1366-1367-1368-1369-1370-1371-1372-1373-1374-1375-1376-1377-1378-1379-1380-1381-1382-1383-1384-1385-1386-1387-1388-1389-1390-1391-1392-1393-1394-1395-1396-1397-1398-1399-1400-1401-1402-1403-1404-1405-1406-1407-1408-1409-1410-1411-1412-1413-1414-1415-1416-1417-1418-1419-1420-1421-1422-1423-1424-1425-1426-1427-1428-1429-1430-1431-1432-1433-1434-1435-1436-1437-1438-1439-1440-1441-1442-1443-1444-1445-1446-1447-1448-1449-1450-1451-1452-1453-1454-1455-1456-1457-1458-1459-1460-1461-1462-1463-1464-1465-1466-1467-1468-1469-1470-1471-1472-1473-1474-1475-1476-1477-1478-1479-1480-1481-1482-1483-1484-1485-1486-1487-1488-1489-1490-1491-1492-1493-1494-1495-1496-1497-1498-1499-1500-1501-1502-1503-1504-1505-1506-1507-1508-1509-1510-1511-1512-1513-1514-1515-1516-1517-1518-1519-1520-1521-1522-1523-1524-1525-1526-1527-1528-1529-1530-1531-1532-1533-1534-1535-1536-1537-1538-1539-1540-1541-1542-1543-1544-1545-1546-1547-1548-1549-1550-1551-1552-1553-1554-1555-1556-1557-1558-1559-1560-1561-1562-1563-1564-1565-1566-1567-1568-1569-1570-1571-1572-1573-1574-1575-1576-1577-1578-1579-1580-1581-1582-1583-1584-1585-1586-1587-1588-1589-1590-1591-1592-1593-1594-1595-1596-1597-1598-1599-1600-1601-1602-1603-1604-1605-1606-1607-1608-1609-1610-1611-1612-1613-1614-1615-1616-1617-1618-1619-1620-1621-1622-1623-1624-1625-1626-1627-1628-1629-1630-1631-1632-1633-1634-1635-1636-1637-1638-1639-1640-1641-1642-1643-1644-1645-1646-1647-1648-1649-1650-1651-1652-1653-1654-1655-1656-1657-1658-1659-1660-1661-1662-1663-1664-1665-1666-1667-1668-1669-1670-1671-1672-1673-1674-1675-1676-1677-1678-1679-1680-1681-1682-1683-1684-1685-1686-1687-1688-1689-1690-1691-1692-1693-1694-1695-1696-1697-1698-1699-1700-1701-1702-1703-1704-1705-1706-1707-1708-1709-1710-1711-1712-1713-1714-1715-1716-1717-1718-1719-1720-1721-1722-1723-1724-1725-1726-1727-1728-1729-1730-1731-1732-1733-1734-1735-1736-1737-1738-1739-1740-1741-1742-1743-1744-1745-1746-1747-1748-1749-1750-1751-1752-1753-1754-1755-1756-1757-1758-1759-1760-1761-1762-1763-1764-1765-1766-1767-1768-1769-1770-1771-1772-1773-1774-1775-1776-1777-1778-1779-1780-1781-1782-1783-1784-1785-1786-1787-1788-1789-1790-1791-1792-1793-1794-1795-1796-1797-1798-1799-1800-1801-1802-1803-1804-1805-1806-1807-1808-1809-1810-1811-1812-1813-1814-1815-1816-1817-1818-1819-1820-1821-1822-1823-1824-1825-1826-1827-1828-1829-1830-1831-1832-1833-1834-1835-1836-1837-1838-1839-1840-1841-1842-1843-1844-1845-1846-1847-1848-1849-1850-1851-1852-1853-1854-1855-1856-1857-1858-1859-1860-1861-1862-1863-1864-1865-1866-1867-1868-1869-1870-1871-1872-1873-1874-1875-1876-1877-1878-1879-1880-1881-1882-1883-1884-1885-1886-1887-1888-1889-1890-1891-1892-1893-1894-1895-1896-1897-1898-1899-1900-1901-1902-1903-1904-1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915-1916-1917-1918-1919-1920-1921-1922-1923-1924-1925-1926-1927-1928-1929-1930-1931-1932-1933-1934-1935-1936-1937-1938-1939-1940-1941-1942-1943-1944-1945-1946-1947-1948-1949-1950-1951-1952-1953-1954-1955-1956-1957-1958-1959-1960-1961-1962-1963-1964-1965-1966-1967-1968-1969-1970-1971-1972-1973-1974-1975-1976-1977-1978-1979-1980-1981-1982-1983-1984-1985-1986-1987-1988-1989-1990-1991-1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-2580-2581-2582-2583-2584-2585-2586-2587-2588-2589-2590-2591-2592-2593-2594-2595-2596-2597-2598-2599-2600-2601-2602-2603-2604-2605-2606-2607-2608-2609-2610-2611-2612-2613-2614-2615-2616-2617-2618-2619-2620-2621-2622-2623-2624-2625-2626-2627-2628-2629-2630-2631-2632-2633-2634-2635-2636-2637-2638-2639-2640-2641-2642-2643-2644-2645-2646-2647-2648-2649-2650-2651-2652-2653-2654-

2. *Trespass* - But where the several act, charges, &c.
 still terminate in themselves & point once done
 we do not admit of a repetition - or of being done
 again - the trespass cannot be laid by several
 continuando. as where one cuts some trees one
 839-95 does & more the next &c. - several trees cut sep-
 840 arately - the cutting of one tree is not the
 242 cutting of another. - but an entry upon land
 141d. shall be several trespasses - If one has entered
 840 upon your land & builds a house on it several
 841 trespasses - you cannot say that he killed a horse
 842 from day to day by continuando - but the
 trespass done the horse is several times
 may be laid by continuando - for the same reason
 the trodden down seed corn is trodden more & day
 what injury is done & the grass on one day & on
 843 what on the next cannot be said to be trodden
 844 But in those cases where the several acts are
 22 not continued as above or several trespasses - yet they
 845 may be charged in one declaration & have been
 846 done at divers times between such & such a day - but they
 are not to be alleged by way of continuando. And
 240 here it is to be observed that if several trespasses
 846 are charged to have been committed on one day and
 241 evidence can be admitted of a single act on that
 242 day or exception that day is the material is, for
 243 what was done committed on one day - for the

may or may not be the same day. Sec. 17th & 18th :
 that in the declaration. Hence there are 2
 modes of declaring upon or charging a tres-
 pass with a continuando. In the one the tres-
 pass may be laid with a continuando for the
 whole time from such a day to such a day &
 that is proper where the trespass may have been & has
 continued without interruption for a longer term 19th &
 than one day. — But where there may have been
 been a repetition of the trespass upon a day sub-
 sequent to the day on which the first trespass is
 charged — or where part of the trespass may have been
 been committed on one day & part on another 18th
 the proper way is to charge the trespass & have it con-
 tinued on divers days & times &c. Sec. 20th & 21st
 where the plaintiff has been ousted & other trespasses. Both
 afterwards done this may be laid by continuando 23rd
 and the rule goes still further for if the plaintiff af-
 ter once ousted has entered & is re-ousted again & re-enters
 he may lay the whole trespass with a continu-
 ando. If a trespass not capable of being laid
 by a continuando is so laid the declaration will be
 fatally ill — & not aided by verdict. 24th & 48th — 25th
 and if a declaration contains several modes of 26th & 27th
 allegation — some trespass laid with a continuando
 which may be aided & others so laid which cannot be
 not & aided — it is ill on demurrer but may be rectified

The charge - is the defendant on the charge - the
 risk. The general issue in the action - as in all such
 711 things the maintenance is not in issue - and if a man
 has indicted in the place has done so for the charge
 but there has been an entry of a copy of the
 on the record - he is bound to show the charge in
 evidence. But here the charge is - there are
 883 & the same charge in the two parts - and in
 884 the first the public counter is an individual
 885 that the charge is - the charge is made
 886 in evidence of the charge - and the charge is
 that this is a fact - could be the place - that as
 is left in the action - the charge of the charge
 887 may be given in evidence - the charge is
 888 that the charge is made - the charge is made
 889 to show it made when made.

The charge is a special charge - the charge is
 890 a special charge - the charge is given in
 891 the evidence under the general issue. But a charge
 892 is a charge in an action of the charge is made
 893 to show a charge in evidence - the charge is
 894 a charge made under the general issue - that
 895 a charge is made in an action of the charge is made
 896 to show a charge in evidence - the charge is made
 897 to show a charge in evidence - the charge is made
 898 to show a charge in evidence - the charge is made
 899 to show a charge in evidence - the charge is made
 900 to show a charge in evidence - the charge is made

under the sentence that he was "Acquainted"
tenant in common with the land at the time
of the death of the deceased & for as between such
tenants & co-tenants this action does not lie.
He has not taken the legal course - nor sold
it. But the act cannot give in evidence his
undisputed fact that he is tenant in common with
a stranger. When a sheriff is ordered to
execute a writ of fieri facias - he must
find the person against whom the writ
is issued, the first is a party to the
judgment. He must obey the writ - The
judgment may be reversed - or a stranger does not
know & has no means of knowing whether the
judgment is reversed or not. But if the writ is
in the action is sued he must show notice of
the writ in the judgment. If a stranger sues
the Sheriff - the Sheriff must find the
person as well as the writ. If a stranger
sues against a person who is a party to
the judgment direct his servant to enter &
do some act upon the premises - before execution is
carried - & the servant is sued in trespass he
must find the judgment - for he does not act
under the execution - he is not bound by the re-
solution. Any person acting in aid of an officer of
the law is not liable in trespass.

Trespass. It is a tortious act. The plaintiff
513 is a stranger to the defendant's land. He is not
514 the sheriff. He is not a tenant. He is not a
515 trespasser. He is not a trespasser. He is not a
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[illegible]

Tripoli. In Eng. the title of a plaintiff cannot
 110 be specially pleaded. The matter would be
 115 the same in the case of the same law.

But in Ann. the title of a plaintiff is given in
 120 the evidence under the gen. issue. The Statute
 2^d provides that the def. may rely upon any
 125 matter or defence except some negative plea
 under the gen. issue.

A special plea of title in the action is not
 130 allowed at Com. law - & the reason is because
 it amounts to the gen. issue - & the general
 rule is that whatever amounts to the gen. issue
 cannot be specially pleaded but must be set
 135 forth in evidence under the gen. issue.

140 The rule however is even in Eng. evaded by what
 is called giving colour of title to the def. - This consists
 145 in alleging some foreign title in the plea & in
 150 in point of law - for it is not found to state truth
 for what title the def. pretends to have - & this
 the def. cannot traverse - it is merely an avowal
 155 of his own title - & is a ~~matter~~
 justification, for putting on the face of the plea
 160 his own title & for saying to the jury, I mean
 to the court which title I have.

In Ann. title may be specially pleaded to the
 165 def. - we have actual & verbal communications
 170 & we have a title, counting upon such a plea.

It is in substance as after - Real Answer
red. The def however is not bound & shall
specially but may as at law give in
in evidence under the general issue. The stat.
enables the def to plead his title specially but
does not obligate him. The stat. enacts that
where trespass is brought before a justice of the
peace & the def relies upon his title for defence
a record shall be made thereof - the matter of
fact (i.e. the trespass) taken, the def & the def
be bound in a recognizance with surety to bring
his suit before the next session of the court of
common pleas. - And if he refuses to become bound
in plea shall forfeit he shall not be heard
on that plea but the justice shall try the cause
as on the general issue. If the def does become
bound it shall be entered - & the record is to be cer-
tified to the next county court. This is not
abundantly found that the def should
be made to prosecute his plea in the county
court & bring a new suit too. - The practice
is to make the record of the justice & enter it in
the docket of the county court - it being first
filed & then sent to the def to prosecute his plea of 80
pence. The pt has done nothing that shows can the
def bring his action as above. If on the trial still
the def does not prove his title he is good for nothing 400

1. *Pres. 10* - damages shall be assessed as to the act
 2. *last* - another office - *Pres. 10* under the con-
 3. *side* - the act may be considered as a
 4. *side* - since - when the title is given, the act is
 5. *side* - the judgment of the court is
 6. *side* - conclusive in any subsequent suit between
 7. *side* - the parties. But the judgment is not
 8. *side* - an action of ejectment brought after a
 9. *side* - Ejectment is of a real nature. It is an in-
 10. *side* - demur or conveyance action in real estate. - It
 11. *side* - is a real action.
 12. *side* - The act where the action is removed & the
 13. *side* - in the complaint is not altered by a removal
 14. *side* - change in the - except as to a defect in
 15. *side* - the title. - It is not a defect in the title
 16. *side* - that which is pleaded before the plaintiff's
 17. *side* - which he cannot after a removal. - It is not a
 18. *side* - defect in the title. - It is not a defect in the
 19. *side* - title. - It is not a defect in the title.
 20. *side* - The evidence is not limited to the title
 21. *side* - and further than the plaintiff's title.
 22. *side* - The evidence is not limited to the title
 23. *side* - but is matter going to the merits of the case
 24. *side* - & not confined to the title. - It is not a
 25. *side* - matter. - It is a general allegation of title
 26. *side* - the title is not a matter of title.
 27. *side* - It is a matter of title. - It is a matter of title.
 28. *side* - It is a matter of title. - It is a matter of title.
 29. *side* - It is a matter of title. - It is a matter of title.
 30. *side* - It is a matter of title. - It is a matter of title.

an action in the 2^d & 3^d persons. Real Presents
provided that the fact offered in evidence be
not such as would support an action in the re-
ceiver, and such fact be alleged. And the
false branch of this rule is established. Thus
the def is charged with breaking & entering into the
plaintiff's house & other enormities there doing. The
225th may give in evidence the beating of his son 20th Dec.
wants - wife or children - for the time place
& circumstances of the trespass are to be taken into
consideration in a trespass action. In the 1st 17th
in such case had laid a per quod - he might have
given in evidence 2^d of service. But you cannot
give in evidence 2^d of service if the action is
not laid in a per quod - not even under
the words alia enormia.

It is not necessary nor usual in the 1st 17th in a Real
Presents action to set out the adultery - but if he
decide must prove them as he alleges - otherwise
if he says a true man & such a man's wife
it is sufficient if he proves the line & the 1st 17th in
must prove the substance - It is not necessary
to prove them with all the precision as in
contracts - where the action is laid in con-
tract the 1st 17th must set line his evidence in
the time within which the acts complained of
in the declaration were committed. For this kind

Trespass & allegation entered into the declaration
 of the trespass. When the trespass is in fact
 not a trespass - the plaintiff avers the
 defendant's breach of the trespass & have been
 committed in any one case & have been
 committed when the trespass is in fact & is not in fact
 the plaintiff must have a remedy in trespass. As
 2nd he may have been seized by the defendant
 2nd still he is not seized he can't have been seized
 as the first act of trespass is not a
 trespass.

A writ of signification is given to the
 plaintiff - But the plaintiff must be a
 plaintiff & signification is given to the
 plaintiff - as may be seen - the plaintiff cannot prove
 the trespass mentioned in the plea
 in bar - he avers all trespasses except those
 in the plea & signification - say he must have
 in his plea a signification that the trespass
 mentioned in the declaration is a trespass
 that mentioned in the plea in bar. Then
 if the plaintiff charges the trespass & have been
 committed on the first of the plea & the plaintiff
 2nd he must - the plaintiff must have a signification
 - 2nd state that the trespass was committed in the plea
 was committed on the 2nd day of the year - when

is different & diverse from that in *Reed v. Borden*
the plea is true. It is a general rule that if
on a special plea of justification which is true
verbal in the *plea* - evidence as much as will
amount to a justification it will still be *good*.

It is correct that not proved exactly as set
out as where it is pleaded that he had under
a *lawful* authority &c. —

When an action is brought by a stranger & a
judgment is given for doing execution upon a
title - he must plead the judgment as well as
the execution - & when it is pleaded he must also
show a copy or example of the judgment in
evidence. But where the action is brought by the
party to the judgment the rule of pleading is not
different - the judgment need not be shown
in evidence nor pleaded. See further at *Trapp*,
under the action of *trespass* or *detourment* -
Smith & Barrington False imprisonment.

Exemption

An action of *detourment* says the judge, is brought
on a *general* principle, he says that at the com-
mencement ~~the action is brought~~ - *this*
is not on the ground of an *injury*, but on
a *general* principle of the law. This
is an action to recover a *major* for the *injury* done and

For the 1st. Formerly there were actions called *Termin*
et Regis - & *Termin et Regis* - which are now gone
 out of use. In these real actions the *Termin* was
 the *Termin* & the *Regis* was the *Regis*. The *Termin*
 was originally only for damages - & the *Regis* for
 it came to be used & receive a term for each &
 the damage action was added to the *Regis* and
 the *Regis* was substituted to the real
 action & is now the common way of the title
 between the claimant. The old real actions were
Termin et Regis - *Termin et Regis* & if either
 party wished to make a *Termin et Regis* action was to be
 the title could not be denied to be - & that these
 actions were the substitution of *Termin et Regis*
 or *Regis*. Every man that was entitled to a *Termin et Regis*
 & regain possession would apply to the *Termin et Regis*
 & if being entitled would go to the *Termin et Regis* & make
 a bargain with him - & if given to a lease
 for years - the *Termin et Regis* was the *Termin et Regis*
 otherwise to be a *Termin et Regis* a *Termin et Regis*. This
 admitted that *Termin et Regis* the *Termin et Regis*. So if
 has now got a lease - he goes & occupies the land.
 He need not wait to be actually turned out - he has
 in quickness of mind to write the *Termin et Regis*. & if he
 tell him *Termin et Regis* & if he *Termin et Regis* - then it is his
 action - this is the origin of the action & it is true that
 & if he did not then of *Termin et Regis* there could be no trial

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To abate this inconvenience the action Real Property
was carried over into Ejectment. John Doe a fictitious
person is supposed to be tenant under White the owner
and he is authorized to turn out all mankind
from the premises - Doe is sued by him the Real
Party - John says Doe turned him out of possession
Doe is supposed to write a friend & pretend White
requesting him to come in & sit land - also he will
make default - White comes in & requests to be made
defendant & upon entering into a rule of Court to come &
leave - entry & ouster. Is now in the modern Eject-
ment - John as well as Doe is a fictitious person &
therefore there can be in fact no lease entry or
ouster - he is admitted to defend. But suppose
White when touched in will not confess lease &c
Doe then ^{sums up} ~~sums up~~ - but White's name would
be struck out & then the action would stand as Doe.
This action will recover possession of the term or
years - But this may make more lease - because
lease to Doe - & then Doe may bring another action
in Doe's name in the other - so it was at Com Law but
not at Ch. otherwise - But one action of Ejectment
suffices - from this - it is sensible now upon the parties.
Ejectment does not lie in case of rent in a year
also for a right of way - This is an incorporeal heri-
ditament - and an action on the case is the proper & best
remedy. So of a stream of water. But where the

17th The interest in real estate is not destroyed by the
 18th of the 18th in not being the same the same as the
 19th 4th The same can be done in the same way as the
 20th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21th 22th 23th 24th 25th 26th 27th 28th 29th 30th 31th 32th 33th 34th 35th 36th 37th 38th 39th 40th 41th 42th 43th 44th 45th 46th 47th 48th 49th 50th 51th 52th 53th 54th 55th 56th 57th 58th 59th 60th 61th 62th 63th 64th 65th 66th 67th 68th 69th 70th 71th 72th 73th 74th 75th 76th 77th 78th 79th 80th 81th 82th 83th 84th 85th 86th 87th 88th 89th 90th 91th 92th 93th 94th 95th 96th 97th 98th 99th 100th

entry & possession of one joint tenant does not prevent
and is in the entry & possession of the other
He had a right & good title the land. and hence
the stat. of limitation shall not run against
him or them not in possession. - But it is held that
if one tenant in common does in such a
manner of the other - But the mere receipt of some
the profits by one will make no difference
suppose both are joint tenants & both do so - But little
too - or rents & profits him out - saying I don't
hold with you - I hold in several - This may
be an adverse holding in it - and so it when the
time comes in dividing the rents & profits one
of them ^{in possession} becomes - saying he holds in several - and
his possession afterwards may be an adverse pos-
session. There is there no need of an actual hosti-
lity between in possession to make the stat. of
limitation run in his favour & the law says
whether say so don't mean an actual ouster.
The mortgagee may maintain the action as
his mortgagee - But the law is not so clear
as to the possession of the land when in the
possession of the mortgagee. The mortgagee
may maintain the action as to the land but
if the mortgagee if the law were made a lien the mortgage
mortgage & without notice to the mortgagee - But while
if the law were made before the mortgage the mortgagee

Specimens mortgage cannot have effect until
with the title - but he may recover the money
if in default. This action may also be
made by the assignee of the mortgage. The
same as the mortgage himself. or as the
holder of the title.

240 The 2^d in this action must show the bond
expressed that the sheriff's bill recover
may have been delivered possession to him.
But this however is not much relied on. It
is not even a matter of record in the court.

15 The land need not be described with so much accuracy
as a note of record in a judgment. The name

534 recover in judgment always according to what
1841 he proves - as if judgment is brought to recover

320 possession of a house - & the deft owns only one
room in the house. In Eng. & in those states

341 where the direction of judgment is used - even
1290 entry & ouster being contemplated - nothing is said

1416 but the title. But so much is necessary
220 the bill must prove that while the deft is in pos-

session. In every action of judgment the deft
251 may sit perfectly still till the bill make out

284 his title. For the deft recovers by the strength
1241 of his own title & not that of the plt. However

180 the plt may in order to succeed himself have a
title in himself or in any body else.

A question is raised in the British Real Property
authorities whether and how the trustee
trust should bring an action of ejectment
as a deft in his own name - the deft will be no
title nor pretend to any - the Court however
shows none but an equitable title is nota-
tively at law - whether under these circumstances
as the deft can recover at law in ejectment
he can show no title except an equitable
It is contended on the one hand that he ought
to show a legal title - that he ought to have
brought in the name of the trustee or of him
who holds the legal title. Sir Mansfield in
a certain case observes that no man shall
be able to eject another when a contract ex-
ists by which a conveyance of the legal title
may be compelled. It has been said by some
however that this is not law. I say - yes the
good sense is a more sound reason in this than law.
If I have entered into an agreement I can
recover land & the deft can be recovered - & to make a bill
shall avail himself of his legal title when
he is bound by an agreement to convey that
legal title to the deft. Suppose when a mort-
gage the whole debt is paid up by the mortgagor
the land is being out - yet in the mortgagee's hands
the legal title is mortgagee then getting possession

Defendant - & the mortgagee being plaintiff
as above - In this case the Def. must not ac-
tually possess of the ^{legal} title in stock
It has been observed that the plaintiff in this action
must prove that the def. is in possession -
and what part of the stock is in possession - & the
reason - it must be ascertained under which
title the stock is in possession - In the Defendant
is well founded - But it is not sufficient in &
that of the stock the plaintiff must prove
that - But it is not sufficient in & that of the stock
it must be ascertained that the def. claims a title
to the stock in this action - But it is not sufficient
that the plaintiff in possession & the defendant is not
there. The judgment gives the plaintiff a title and
a right of possession & the stock is in the
actual possession. But it is not sufficient in &
~~the~~ execution would the def. in the stock
in remede is only in Defendant's possession -
But when the plaintiff is in possession, the
reason that the plaintiff is in possession - and the reason
is there may be a defence subsequent & execution
then - as an order & for the stock.
The consequences of a judgment in Defendant's
is & in the stock recovery & an action
for the stock is not sufficient. The action
now in Defendant is not nominal. & it

think of making a case of a Real Estate
third person. For bringing the action in that
third person name. But made in much
shorter - Here the pt. states that he was at
such a time seized in fee of such & such land
& continued to be seized till at such a time
the def. seized &c. -

Our Stat. of Limitations takes away from the
original owner not only the right of entry
again &c. but his title (ie when another has
been in possession adverse to him. as the
reversion of personal property is treated as
the possession so with us in real property
the right of possession is here the right of prop-
erty - The law requires actual, legal pos-
session in the pt. to bring trespass - but here
it is otherwise

Waste

Waste is an injury done to the real estate
of one of the parties to the estate in fee or
in possession. You cannot bring trespass
on the pt. because he has the right of
possession as well as the reversion. Possession
alone can be brought on and the pt. cannot
bring the waste committed by the tenant from
either by a notice under his possession, or
stranger ^{entering the land} for a title to the land

and that is one the least - Great October 1
instead of doing an injury does good as far
as the domestic animals are concerned - The
same last or just indicated - but the same
in the same way - and in the same way - all
modern cases are the same where they have
been left to the waste - The point has been
to maintain an action, of this kind. However, the
it may be considered as waste - on the ground 23,
of changing the title - the title of the land - the
title may perhaps be lost - and the land
is - the ancient distinction is lost. This is now
now probably what the law has settled - but
one kind of waste however is not waste - in the
turning pasture into arable ground. But 5,
turning arable ground into pasture or meadow
into arable ground is in the waste. In the
country where the large I have no idea that such
a change would be waste especially if there should
be improvement. The principle there seems to be
is that the land is changed as well as improved.
That which is deemed waste, or not, I consider
not so here in many instances - The idea of
waste is in the law of the country and of the
putting down fruit trees - trees for ornament and 8,
and are in the waste and the law is more.
In the waste suffers the land like overgrown by

Waste is an evil, not in law, but in the degree.

It is said the laborer should have a share in
 285 the profits that the farmer should have. But
 when a lease is made & the trees are executed
 by the laborer - who is not doing the action of the
 capital - a stranger cuts these trees. No doubt
 but the laborer may have trees & I think so.
 290 I say the charge that as the execution leaves the
 land, and in the lease the trees are made
 work have trespass. Suppose a lease is made without
 295 excepting the trees - I suppose in terms of the
 with the exception of the trees - ^{the trees} ~~the trees~~ ^{the trees}
 now maintain an action for trespass against the
 300 shall lease, are sometimes made without in each
 man's waste - there is no waste at all exist
 305 in the nature of waste. But the laborer may
 310 have an action on the ground - a man may
 make money of the farm - & destruction in terms
 315 just as he is observed is not waste.

It is to be observed when the action lies - At common
 law no action for waste lies except as a tenant
 320 & he who comes in by operation of law - & it is not
 325 But by stat. this action was extended to all
 330 and to live or dead. Therefore it will run in
 335 law not waste - They are trespassers - in the
 340 moment they do a wrong act that is not
 345 determined - the very first time they do the act.

I suppose, does the action of waste. Real Property
 lies at the executor - I mean in the executor
 committed waste - but suppose the waste was
 in the time committed waste. Will the
 executor be liable in waste. The maxim of acti
personalis moritur cum persona does not ex-
 tend to contract it is agreed. But in the case of
 a tort. For personal injuries the maxim affects
 the person as the representative the executor is not liable
 liable - simply so - but the tort is done first
 in the person or executor then the action
 action lies at the executor - But suppose the land is sold
 and are committed by the executor the executor
 have a recovery may be had - but the action
 cannot be laid charging one, since it is done.
 As to who may bring this action - I must be
 the immediate remainder man or reversioner
 upon
 an estate be given to or to the remainder & to
 the remainder & to in fee. The rule is that with
 no one but the remainder man or reversioner
 in fee can sue this action. Who then in the above 54th
 instance can maintain the action? No action is
 of waste lies till the surrender of the reversion
 But what is recovered in this action - It is a
 mixed action - The plaintiff recovers treble damages
 for in this state we give only simple damages - In
 some of the states the rules are different.

[The handwriting is extremely faint and illegible throughout this section.]

another instance of real property
The remedy
is that in the action on the case. It does not
good say the judge to define the term. Fairness
This will be from the same word as above
It is a more specific and more ancient right
than the right of a man. He
has a certain right in the right to reason that some
is in evidence. When the books tell us that
the are ancient rights when the man
man cannot not be certain - they mean
that their existence must have existed in the
law at the time of Richard I. - In fact the
the presumption is that their existence existed
in Richard I. A house erected after the year 1200
is not ancient - The who own land adjoining may
erect another house closer and for the ancient
right of the house because they are not ancient -
and in our little village. - But if one is situated near
the grantee cannot ^{not} stop the luminaries of the
ancient house adjoining - right to the house is not ancient
demolition. A man cannot erect a house in a
in a street - nor indeed can the public. A man
adjoining is not over his personal property. The
house is not ancient - but the right to the house is
not ancient - the right to the house is not ancient -
the right to the house is not ancient - the right to the house is not ancient -

100. nuisance - so that one landowner is a nuisance to
 another - that the right over land is a right
 which is subject to the exercise of the right
 the right of the landowner - that is a nuisance
 does seem to be a nuisance - as an exercise
 of a right - there may be a nuisance in the
 fact that an action of trespass is not an action
 101. may be brought - where one man's right over
 604. land is another land - the action is - a nuisance
 605. is a nuisance - and it is a nuisance in the
 showing the current of water from one land
 606. to another land - the nuisance is a nuisance
 of water - the nuisance is a nuisance
 607. of water - it is a nuisance in the
 608. which are nuisances - nuisances - nuisances
 in a river - a nuisance is a nuisance
 609. of it. The nuisance is that we must use our
 property was not to injure our neighbors
 where a man has a ditch - a nuisance is a nuisance
 610. till it was a dam the water is a nuisance
 611. of it - it is a nuisance, or which is a
 612. nuisance - the land is a nuisance - the land is a nuisance
 613. of it - a nuisance is a nuisance - a nuisance is a nuisance
 614. of it - a nuisance is a nuisance - a nuisance is a nuisance
 615. of it - a nuisance is a nuisance - a nuisance is a nuisance
 616. of it - a nuisance is a nuisance - a nuisance is a nuisance
 617. of it - a nuisance is a nuisance - a nuisance is a nuisance
 618. of it - a nuisance is a nuisance - a nuisance is a nuisance
 619. of it - a nuisance is a nuisance - a nuisance is a nuisance
 620. of it - a nuisance is a nuisance - a nuisance is a nuisance

[illegible]

171. *Unilateral*. But a right of way may be
 be granted by grant or prescription that
 is *unilateral* - as it is said
 172. that another piece of land in the middle of
 of the grantor's land - the grantor cannot
 173. get it without giving the grantor a
 174. he implies grant also a right of way
 175. if the same is granted. So if the grantor
 sells all his land & one - except a portion
 in the middle - the grantor having a
 the right is reserved - the grantor impliedly
 176. reserves a right of way. But if a portion
 of land is granted in the middle of
 177. the donor's land - he does not thereby acquire
 a right of way. —

If the right of way be sufficient - the prescription
 may be an action on the case. — In the case
 of a right of way by implication of law - the lo-
 cution quo is not awarded at all for law - the
 award must be in the most convenient place.
 The term prescription has got the same mean-
 ing here as in other places. If the way has
 been there a long time - so that the memory
 of man runs after it - the grantor - he must
 show that no other place is more convenient.
 178. If a man be prevented or obstructing a way - &
 179. the other look to the grantor & see if he has been

Vincennes - on a island without owning the land
under the water - It even admitted to write
& then it is more an incorporation - a
surrender. - The right he was granted like
any other incorporeal hereditament - so
he may have his action on the case against
one who is guilty of a breach of that
right. Thus far as the law is concerned -

As to Forcible Entry & Detainer The
statute of this state & in other states also has
made special provision. A man never could
retake his property if in so doing he disturbed
the peace - so that you see he could go
anywhere & take him if he could find a person in
breach of the peace. If the house is in a street he
may go & take him - It not unlikely he is that
the action of trespass - for this is the nature of
the house & not the more important. Thus it is that
originated in the time of the Dauphin's arrest
which the stat. Rich III. vested an action with a strong
solid hand - manly sort - & a particular mention is
20th where a strange set of relations of men & women
the family are called exceptions as where a wife
was given to her husband & he was taken from
indictment. The stat. 10 Rich III. provided that in-
stead of indicting the parties with the usual com-
plaint & return made of such a wife & child, which

[illegible]

Forceful Drive - A strong man can
 on several parts have his attention
 have his mind on the matter at hand -
 456 In the center. But I think the action in
 the window is a Lucille action.

For the distance between the door and the
 window is not so great as the distance
 50 from the right door - it is a Lucille distance
 and the action is more like a Lucille action. I
 60 think it is in the furniture and the
 Lucille action - but the door is not in the
 71 back the same way - but may be the same, it is a
 Lucille distance. It is the same as the
 8 house and the same as the same. So the
 other distance is the same as the same. So the
 786 may be the same as the same. So the
 240 the distance - it may be the same as the same.
 224 the action. It is the same as the same.
 240 the action. It is the same as the same.
 40 each other as well as the other persons.

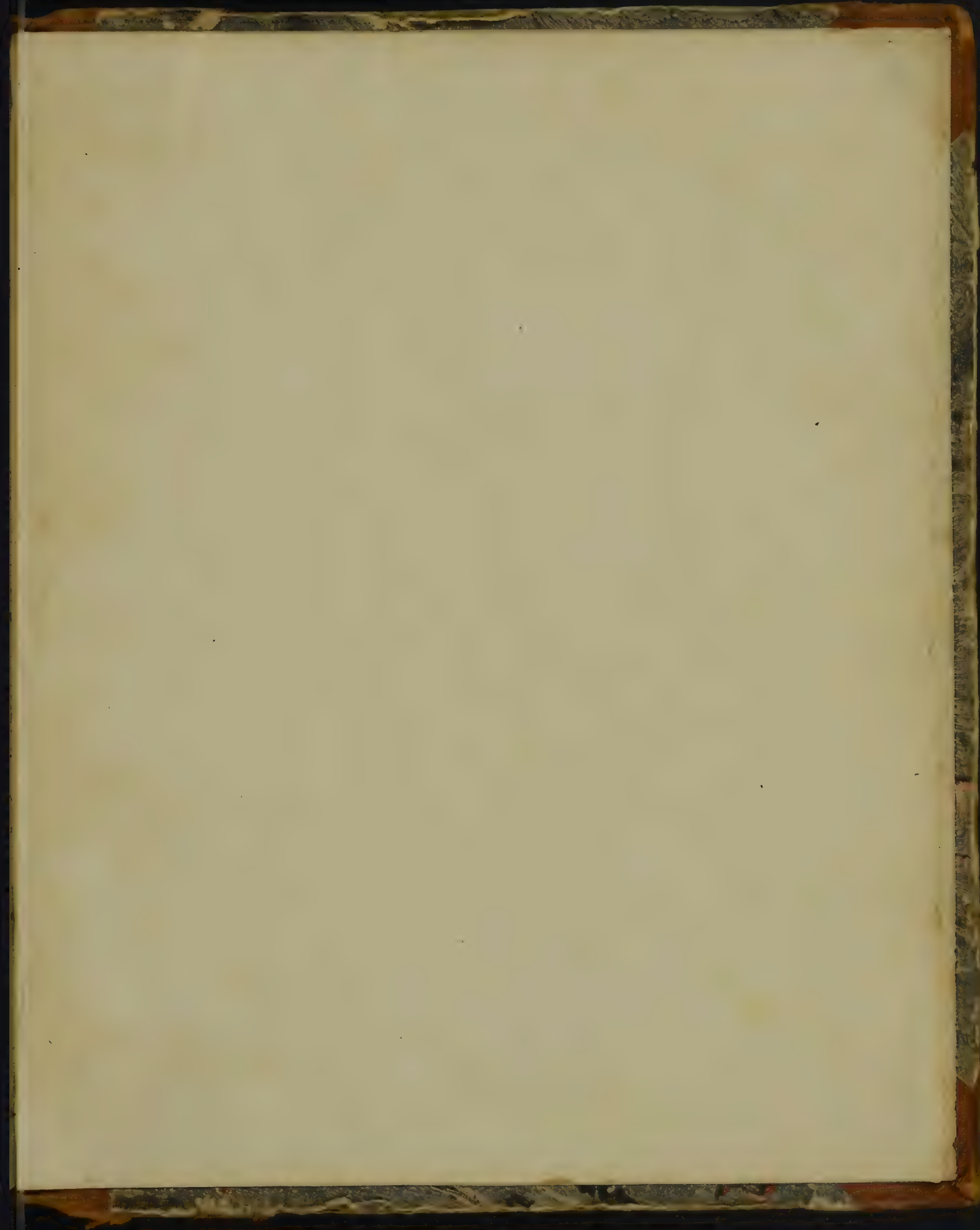
The Empirical Property.

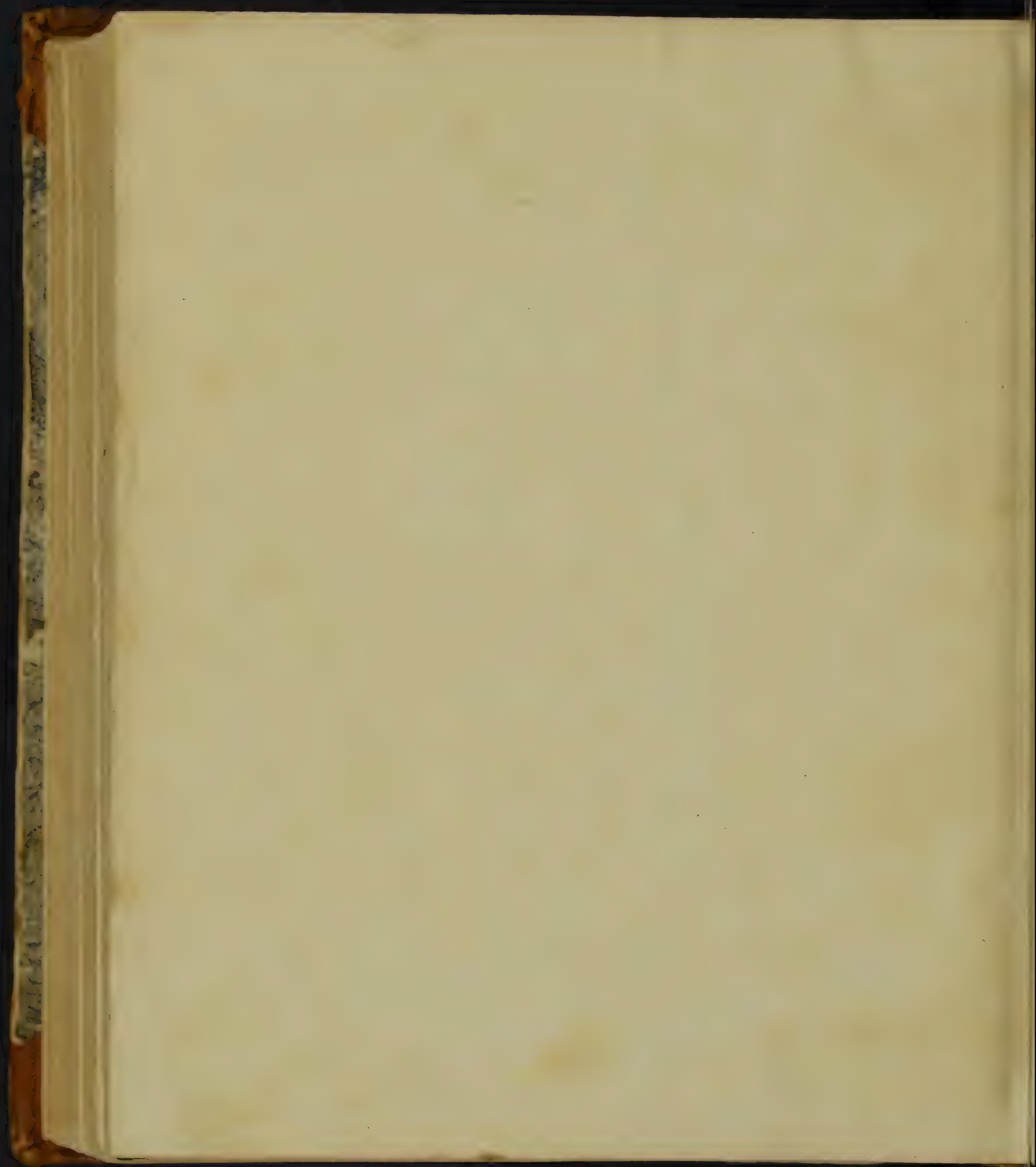
100

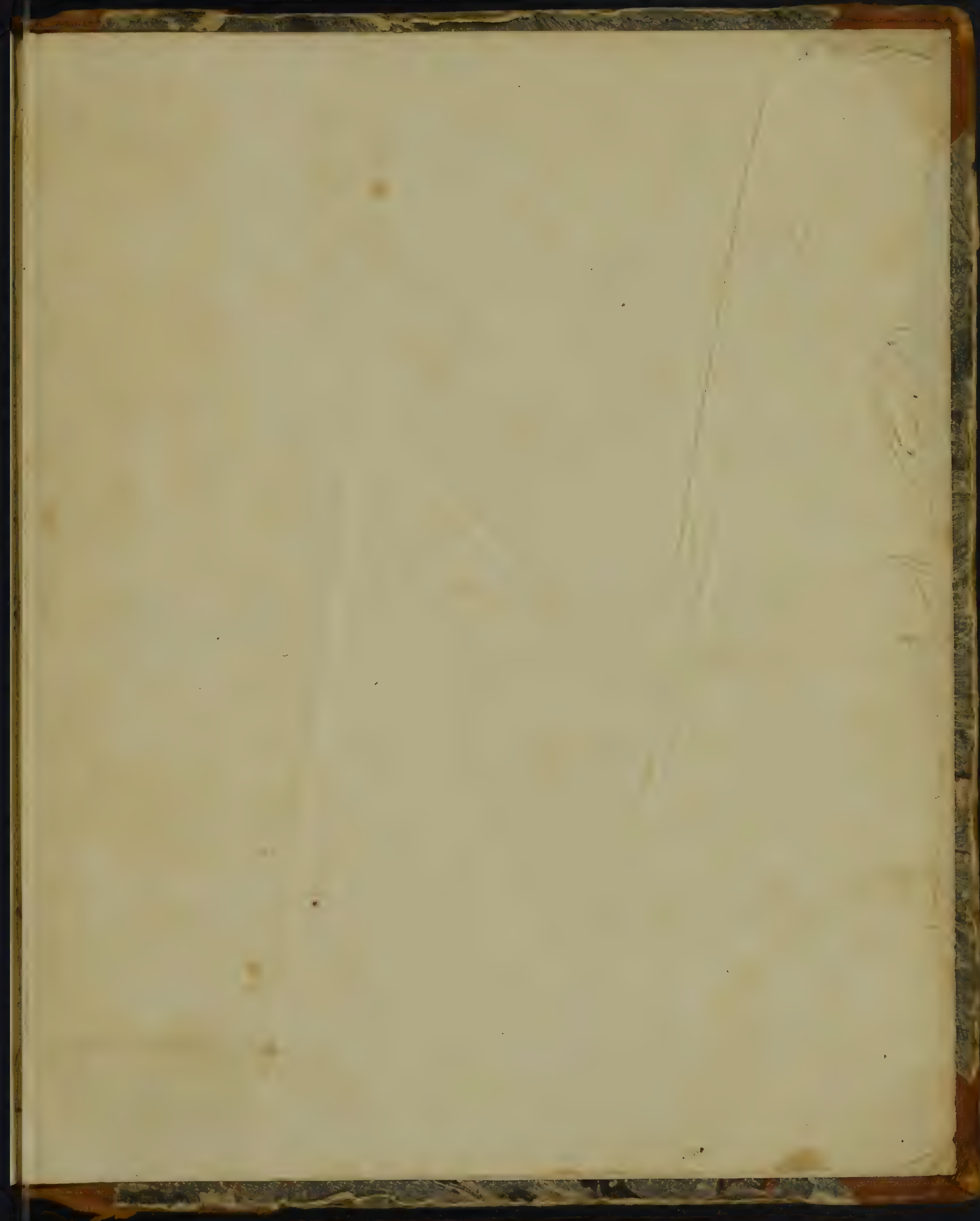
$$\begin{array}{r} 100 \\ \times 2 \\ \hline 200 \end{array}$$

$$\begin{array}{r} 100 \\ \times 2 \\ \hline 200 \\ \times 2 \\ \hline 400 \end{array}$$

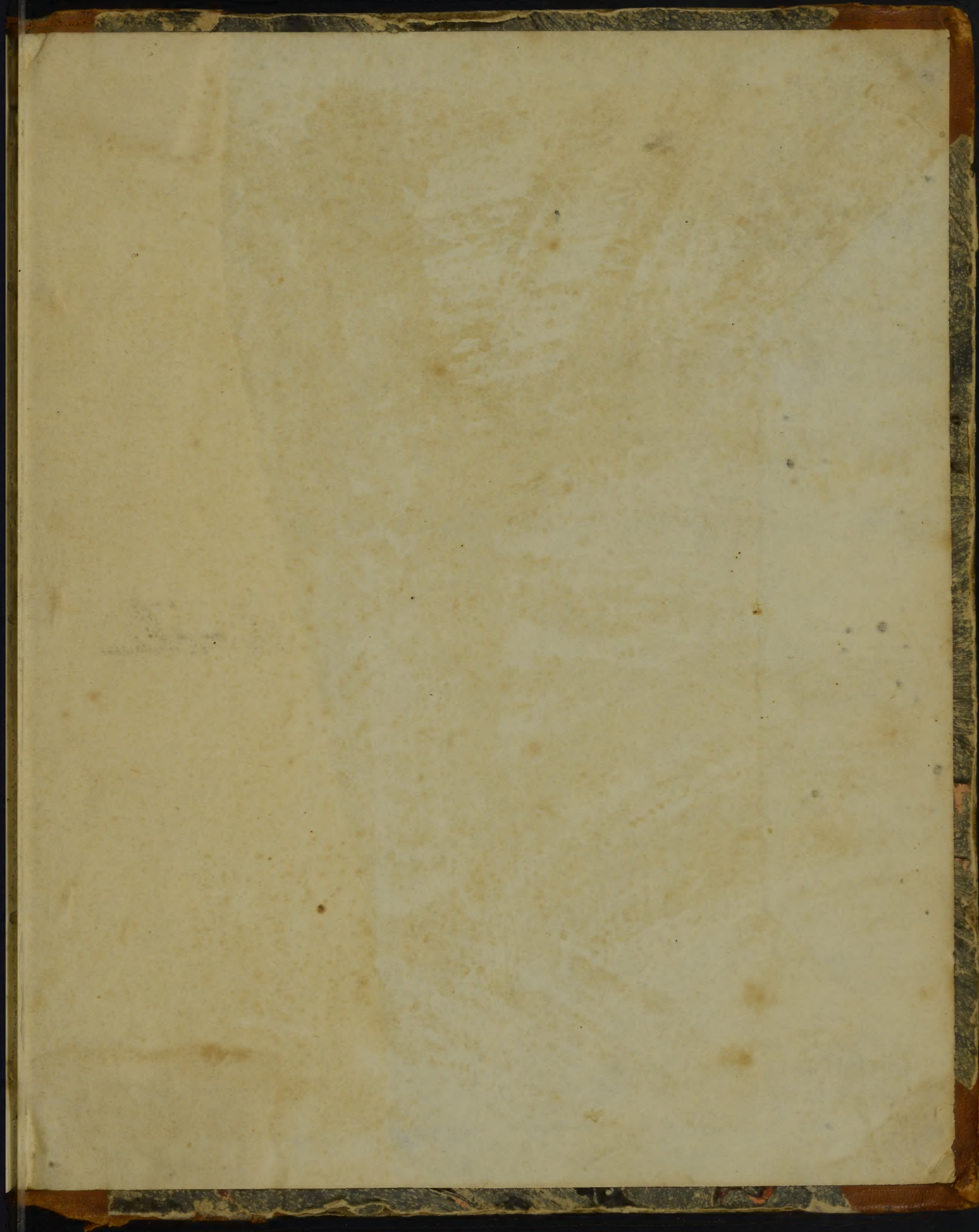
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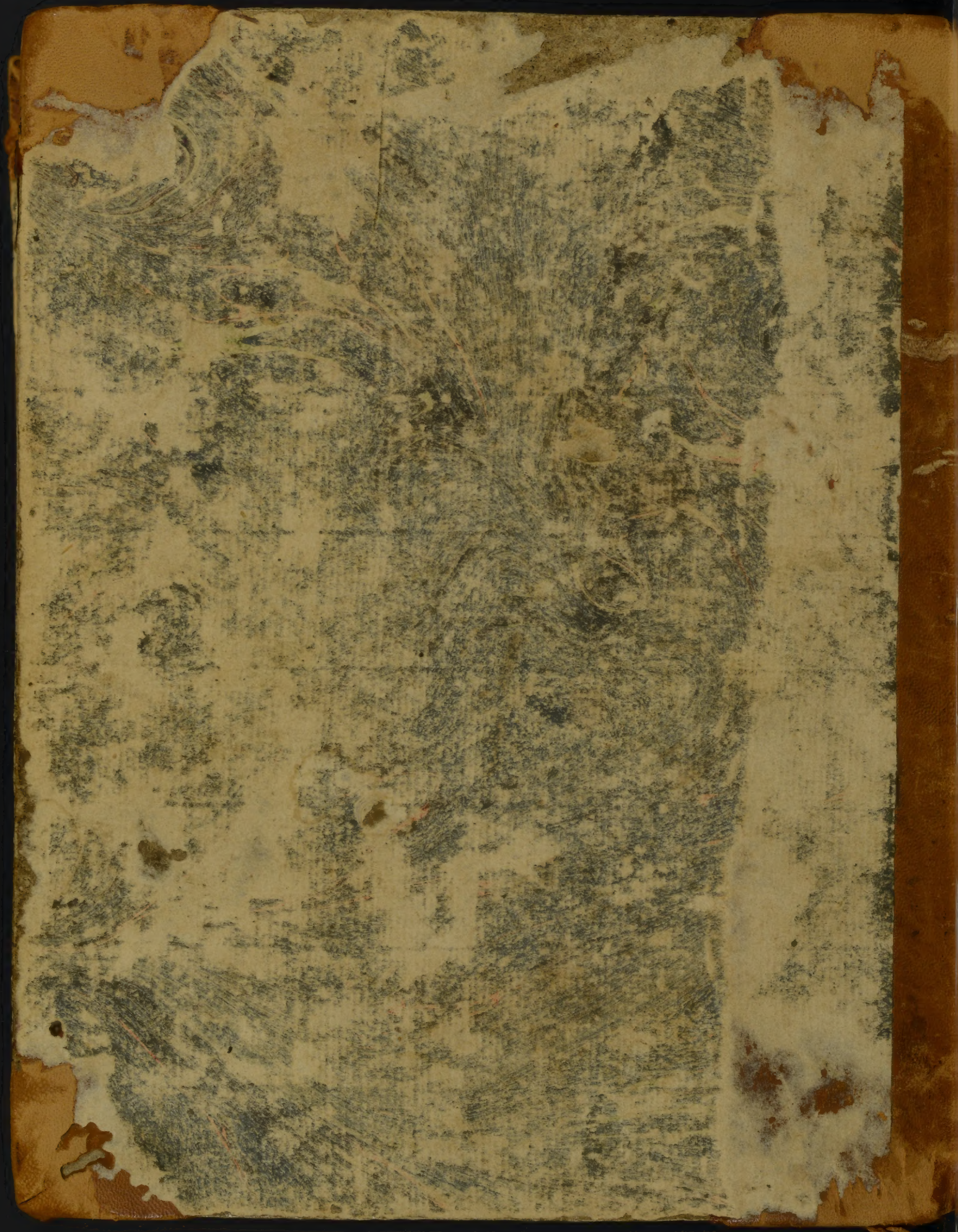






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